THE MONOPOLIES AND MERGERS COMMISSION

# Discounts to Retailers

A report on the general effect on the public interest of the practice of charging some retailers lower prices than others or providing special benefits to some retailers where the difference cannot be attributed to savings in the supplier's costs

*Presented to Parliament in pursuance of Section 83 of the Fair Trading Act 1973*

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[1] These members formed the group which was responsible for this inquiry (see paragraph 1.2)
[2] Mr R G Opie ceased to be a member of the Commission on 28 February 1981.

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## Glossary

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| **CTN** | A confectionery/tobacconist/newsagent shop often also selling stationery and other sundries. |
| **CWS** | Co-operative Wholesale Society Ltd. |
| **Department Store** | A large shop comprising a group of departments all under one roof and usually under one management, each department dealing with a particular branch of retail trade. |
| **Discount Store** | A shop usually selling consumer durables and other high-unit-value articles at a substantial discount often with minimal service. |
| **Director General** | Director General of Fair Trading. |
| **Hypermarket** | A self-service shop selling groceries and a wide range of other merchandise, with at least 50,000 square feet of selling space and ample car parking facilities but excluding shops generally recognised as department or variety stores. |
| **IGD** | Institute of Grocery Distribution Ltd. |
| **Independent retailer** | A retail business with less than 10 outlets. While this includes some organisations containing one or more large shops, the majority of independent shops are relatively small and many independent retailers operate only one shop. |
| **Multiple retailer** | A retail business with 10 or more outlets. Also described as *'multiple chain'* or *'chain stores'*. |
| **OFT** | Office of Fair Trading. |
| **Overrider** | A retrospectively paid discount or rebate usually related to the performance of the customer, for example, his achievement of a specified level of purchases over a period. |
| **'Own label' goods** | Goods sold under the distributor's trade name. Also known as 'distributor owned brands', 'house brands', 'private label goods', 'stencil products'. |
| **Retail Co-operative Societies** | Retailing organisations owned and controlled by consumer members, belonging in terms of number of outlets to the 'multiple' or 'independent' category, predominantly the former. |

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| **RPM** | Resale Price Maintenance. |
| **RTP** | Restrictive Trade Practices. |
| **Supermarket** | A self-service shop selling a full range of goods and some non-foods, with at least 2,000 square feet of selling space and at least three checkouts. |
| **Superstore** | A self-service shop selling groceries and a wide range of other merchandise, with at least 25,000 square feet of selling space and ample car parking facilities but excluding shops generally recognised as department or variety stores. |
| **Variety Store** | A shop selling a very wide range of goods usually displayed on counters, racks or trays for selection by customers, with merchandise not concentrated on any one type of product. |
| **Voluntary Group** | An association of a number of independent retailers with one or more wholesalers with a view to obtaining requirements on better terms from large orders and benefiting from economies in distribution and from certain common services and policies and a trading identity. Also described as *'symbol groups'*. Retail members are sometimes referred to as *'affiliated'* retailers. |
| **Wholesaler** | An intermediary between producer and retailer whose main functions include breaking bulk and holding stocks in a warehouse. Wholesalers in the delivered trade (also described as *'traditional wholesalers'*) normally deliver to retailers' shops and offer credit. Goods from *'cash-and-carry' wholesalers* are collected by the customer and paid for on the spot. |

CHAPTER 1

# Introduction

1.1. On 12 July 1977 the Department of Prices and Consumer Protection sent the following reference to the Commission:

## FAIR TRADING ACT 1973

### DISCOUNTS TO RETAILERS

The Secretary of State in exercise of his powers under section 78(1) of the Fair Trading Act 1973 hereby requires the Monopolies and Mergers Commission to submit to him a report on the general effect on the public interest of the following practice, which appears to him to be a practice within section 78(1)(*b*), that is to say—

the practice of the acquisition by or the supply to some retailers of goods—

(*a*) at prices less than those charged to other retailers by the supplier, whether the reduction is by means of a discount, rebate or allowance or by means of prices specially negotiated, or

(*b*) on terms which involve the provision of any special benefit in money or money's worth by the supplier to those retailers in connection with the supply of the goods by or to the retailers, not being a benefit provided to other retailers,

where the reduction or the value of the benefit cannot be attributed to savings in the supplier's costs.

For the purpose of this reference the acquisition by or supply to retailers of goods shall include the acquisition by or supply to distributors acting on behalf of or in association with retailers individually or as a group.

(*Signed*) D N Byrne
*Under Secretary*
DEPARTMENT OF PRICES AND CONSUMER PROTECTION

DATED THIS 12TH DAY OF JULY 1977

In a covering letter to the Commission, the Department suggested, in relation to the fact that the reference covered all retailing, that, in order to expedite the inquiry, we might concentrate mainly on those areas where large discounts are known to be given (such as groceries and petrol), and that in other areas we might consider that a less detailed inquiry was necessary. The hope was expressed that, if we found that the reference practice[1] was operating against the public interest, we would consider and make recommendations about how the problem might best be solved.

[1] Subsequently referred to as 'the practice' except where the context requires otherwise.

1.2. On 13 July 1977 the Chairman of the Commission, acting under section 4 of the Fair Trading Act 1973 and paragraph 10(1)(*b*) of the third schedule thereto, directed that the functions of the Commission in relation to this reference should be exercised through a group consisting of seven members of the Commission. These included Mr S A Robinson who died on 10 April 1978. On 19 May 1978 the Chairman appointed Dr R L Marshall to serve as a member of the group. Professor B S Yamey ceased to be a member of the Commission when his term of appointment expired on 31 July 1978, and he took no part in the inquiry thereafter. Mr C J M Hardie ceased to be a member of the group after his appointment as Deputy Chairman of the Commission from 1 January 1980 and took no further part in the inquiry. The composition of the group responsible for this report is indicated in the list of members which prefaces the report.

1.3. In response to a general public invitation and our own specific approaches, we received written and oral evidence from representative organisations in the fields of manufacture and distribution, trade unions, consumer organisations and a large number of manufacturers, wholesalers, retailers and individuals. We undertook a number of surveys, including an area price survey which was carried out in conjunction with Binder Hamlyn, chartered accountants.

1.4. We wish to record our appreciation of the help given by all those who submitted evidence or views or otherwise assisted us. A list is contained in Appendix 18. Much of the information made available to us by individual concerns was of a highly confidential nature, and we have felt unable to attribute this in our report or to present it in a manner which might enable its source to be inferred, because of the risk that this might be prejudicial to the interests of those concerned.

CHAPTER 2

## Scope of the inquiry

2.1. The practice referred to us may arise where:

(*a*) the supplier charges lower prices to some of his retail customers than he does to others or

(*b*) there are differences in the supplier's other terms which involve the provision, in connection with the supply of his goods, of a special benefit or benefits in money or money's worth which he accords to some of his retail customers but not others.

As respects (*b*), we regard a benefit as 'special' if the supplier accords it to some of his retail customers but not to others or in larger amount or more valuable form to some of his customers than to others. Clearly, the benefit must be a benefit to the retailer.

2.2. The practice does not arise where differentiation in the supplier's prices or in any special benefits he may provide correspond to differences in his costs. The practice does arise when 'differentiation' in price and other terms is not attributable to cost differences and, for convenience, we refer to this as 'discrimination'. We explain below some interpretations and limitations we have accepted in our inquiry.

**Prices and costs**

2.3. If the supplier charges the same price to all his customers, even though the costs of supplying them are different, the practice does not arise by virtue of anything that is said in sub-paragraph (*a*) of the reference. As regards the 'special benefit' referred to in sub-paragraph (*b*), we have limited our enquiries to differentiation in the provision of specific benefits of the types referred to in paragraphs 4.23 and 4.24 and to certain other practices about which we have received complaints.

2.4. We have not therefore investigated the practice of charging uniform delivered prices. This may raise questions of interest for economic analysis, but it does not materially affect the conditions of competition as between large retailers and small retailers and the relations between retailers and their suppliers which lie at the heart of our inquiry. The range of our inquiry, even as we have interpreted our task, is sufficiently wide and we would suggest that, should it appear that a practice of uniform delivered prices raises questions of public interest, it should be the subject of a separate study.

**Our inquiry as it relates to wholesalers**

2.5. Our reference provides that the phrase 'the acquisition by or supply to retailers of goods' shall include 'the acquisition by or supply to distributors acting on behalf of or in association with retailers individually or as a group'. The effect of this provision is that sales to wholesalers who operate as members of voluntary groups are included within the reference in that such wholesalers may be said to act on behalf of or in association with the retail members of the group. It should be noted, however, that a wholesaler belonging to a voluntary group may also supply retailers who are not members of that voluntary group or who are not members of a group at all. The purchases made by such a wholesaler on behalf of retailers belonging to the group are not usually segregated from purchases which he makes for his other customers.[1]

2.6. Sales to wholesalers who have been brought into being by groups of retailers specifically to serve them are also clearly included within the reference. The CWS is the principal example of such a wholesaler but there are others.[2]

2.7. Irrespective of whether sales to particular classes of wholesalers are covered by our reference, all wholesalers who supply retailers are covered in their capacity as suppliers.[3] Plainly, the distributive trades are affected by the relationship between the terms on which supplies are purchased by wholesalers and those on which they are purchased by retailers who buy directly from manufacturers rather than through a wholesaler. As the effect of this relationship is important for our inquiry, we decided, for analytical reasons, to investigate the terms on which wholesalers generally are able to buy and not to limit our investigation in this respect to 'distributors acting on behalf of or in association with retailers individually or as a group'.

**Goods in general and in particular**

2.8. Our reference specified the supply of 'goods' thus excluding the supply of services. It is not restricted to particular types of goods and is therefore concerned with all goods which are sold retail.[4] However, the practice cannot arise where the retailer produces the goods he sells or where the goods are acquired from a person who supplies him alone with those goods.

2.9. We have interpreted the reference as requiring us to consider differences in the prices of the same goods. Clearly comparisons of prices for the purpose of ascertaining whether lower prices are attributable to savings in the costs of supplying the customer in favour of whom the reduction is made are feasible only in respect of goods which are the same or almost the same. It must be a question of judgment in individual cases whether particular goods are for all practical purposes the same goods or different goods.

2.10. These considerations arise in relation to 'own label' goods which may be very similar in specification to a national brand of the manufacturer supplying them and occasionally identical to it save for the label. Our own inquiry into the prices and costs of supplying 'own label' goods[5] was very limited.

[1] Where the wholesaler purchases group 'own label' goods, these are usually only available to retailers belonging to the group.

[2] Londis (Holdings) Ltd is another example in the field of groceries. In another field, there are buying groups set up by retailers dealing in electrical appliances.

[3] Some wholesalers in the food trade supply only caterers.

[4] In practice, we deal mainly with the grocery trade in its widest sense (although we make references throughout the report to other areas of manufacture and retailing). See also paragraphs 1.1 and 7.4.

[5] See also paragraphs 5.29–5.30 and 6.10.

**Transactions with parties overseas**

2.11. Our reference does not limit us to transactions between parties both of whom carry on business in the United Kingdom.[1] However, although the terms on which a retailer in this country may acquire goods from an overseas supplier may involve the practice, we have not thought it useful to seek information from suppliers overseas who are not subject to United Kingdom jurisdiction. We have not excluded from our inquiry transactions with retailers and wholesalers in this country where an importer is the supplier.

[1] Section 78(1)(*b*) of the Fair Trading Act 1973, under which the reference to us has been made, relates to 'specified practices which appear to [the Secretary of State] to be uncompetitive practices'. These practices are defined in section 137(2) of the Act as 'practices having the effect of preventing, restricting or distorting competition in connection with any commercial activities in the United Kingdom'.

CHAPTER 3

# Background to the inquiry

3.1. Preference by traders in favour of their more valued customers is as old as trading itself. It may be due to mutual trust or loyalty or to a close and mutually advantageous trading relationship; or it may reflect differing skills in negotiation. However, our report is concerned with discrimination by suppliers in doing business with their retailer and wholesaler customers. An important reason for this discrimination is disparity in the bargaining strengths of different customers.

3.2. The rapid emergence in recent years of strong retail buyers, particularly certain multiple retailers in the grocery trade, is of special interest because of its impact on manufacturers, small shopkeepers and consumers.

3.3. Competition between large organisations and independent businesses is no new phenomenon, either in retailing or in manufacture. Thus, Alfred Marshall wrote in 1890: 'There is a strong tendency for large establishments to drive out small ones in many other industries. In particular the retail trade is being transformed, the small shopkeeper is losing ground daily.'[1] Nevertheless the changes in the structure of distribution in the past 25 years have probably been both faster and more far-reaching than in any similar previous period, and the pace of change shows no signs of slackening.

3.4. The inter-war period was characterised by a growth in the number of manufacturers with a nationwide sales network, promoting their products under brand names, by advertisement and other forms of salesmanship. Trade prices were typically determined by price lists subject to customary discounts. Competitive price cutting during a period of prolonged and severe economic depression tended to be seen by suppliers and, indeed, by the governments of the day, as an evil, and resale price maintenance in its various forms was widely practised and supported. Together with extensive price-fixing and other restrictive agreements operated by trade associations, it inhibited price competition throughout the chain of production and distribution.[2]

3.5. During the war and immediate post-war years the structure of distribution was frozen in its pre-war mould by the effects of rationing, building controls and other restrictions. However, during the 1950s changes began to take place. In particular, resale price maintenance came under growing attack from certain retailers who wished to be free to compete on the basis of price. In the grocery trade they were helped by the expansion in this country

[1] 'Principles of Economics', Chapter 11, section 6. He goes on to say: 'Let us look at the advantages which a large retail shop or store has in competing with its smaller neighbours. To begin with it can obviously buy on better terms, it can get its goods carried more cheaply, and can offer a large variety to meet the taste of its customers.' He cites other economies of scale.

[2] It did not, however, prevent discrimination. See for example, section 1 of Appendix 1 of this Commission's report on Collective Discrimination (Cmnd 9504) published in June 1955.

of several large American-owned manufacturing companies which were frequently more flexible in their attitude to price competition and which provided alternative sources of supply. More important perhaps, the climate of opinion about the restriction of competition was changing, partly as a result of the early work of this Commission, and in 1956 the Restrictive Trade Practices Act not only set in train the gradual elimination of restrictive agreements but also prohibited outright the collective enforcement of resale price maintenance. The introduction of trading stamps on a wide scale (they are now used on a much reduced scale) brought further pressure on the system in the early 1960s. Since the passage of the Resale Prices Act 1964, resale price maintenance has largely come to an end.

3.6. The progressive disappearance of resale price maintenance removed obstacles which had previously hampered the expansion of those retailers who sought to compete on the basis of price, notably the multiple chains geared to the rapid turnover of goods at low prices. Faced with retail prices which increasingly differed between shops and with wider dissemination of information about prices and products, consumers have progressively transferred their custom to low-price retailers. In the field of groceries, successful multiple retail chains rapidly increased their market share at the expense of the Co-operative societies and independent grocers, particularly the latter. Although the Co-operative movement was the first to introduce self-service after the war, multiples were the first to develop the self-service supermarkets on a large scale, aided by improvements in packaging. Rapidly rising labour costs increased the comparative advantages of this method of trading. During the 1970s, when prices rose very rapidly, shops with a reputation for low prices gained further appeal and price competition intensified. The spread of car ownership has made it practicable for multiple grocers to concentrate an increasing proportion of their retailing activity in superstores and hypermarkets, drawing their custom from a large catchment area, and to obtain the economies of scale associated with this type of retailing. Those which have developed their businesses in this way appear to have increased their competitive advantages. Appendix 1 records changes in the pattern of distribution which have occurred both in groceries and other trades and which, as described more fully in Chapter 7, have involved a great reduction in the number of shops and a continuous decline in the independent retailers' share of the grocery trade and most other trades.

3.7. As a result of these developments, manufacturers of consumer goods have found that the mode of distribution of their products to the final consumer has been transformed. At one end of the spectrum of their customers are the very large buyers, namely, the largest multiple retailers, Co-operative societies and discount chains. At the other are the small unaffiliated independent retailers. In between these two extremes there is a range of department stores, variety stores, smaller multiples, mail order houses, independent retailers in voluntary groups and wholesalers of all kinds.

3.8. On the supply side there have also been marked increases in concentration in many sectors and product groups. In some products, the bargaining strength of the sellers appears to be at least equal to that of even the largest buyers. In others, there are signs of imbalance, one way or the other. Reflecting this complex market situation, discrimination has taken new forms and appears to have increased in both prevalence and degree.

3.9. In a number of overseas countries price discrimination has been the subject of legislation to which we refer in Chapter 8 and Appendix 2. In the United Kingdom, the report of the Bolton Committee[1] in 1971 expressed concern about the effect of price discrimination on small retailers and referred to retail grocery as an obvious example of an industry in which the use of great market power, particularly buying power, enabled the large company to achieve dominance. In the Committee's view, one of the main reasons for the growth of the great supermarket chains, and for the comparative rarity of 'independent' supermarkets, was the ability of the chains to exact highly advantageous terms from food manufacturers and other suppliers. This enabled them to offer goods at prices which the independents, no matter how efficient they were, could not match, or to apply the additional margin in other methods of promotion. The Committee did not believe that true cost savings resulting from regular large purchases wholly accounted for the very large buying price differentials achieved by some multiples. Although the public might be presumed to benefit through lower prices, the benefit might be transitory and dearly bought in the long-term if price discrimination had the effect of inducing further concentration of market power. The growth of voluntary groups as a reaction to the buying power of the multiples had achieved considerable success, but they were largely confined to food retailing and even within that trade many retailers were not members of groups. The Committee did not feel qualified to come to a firm conclusion on this issue, but recommended that consideration be given to referring to this Commission 'the question of the market power exercised by large firms through their buying policies, and the possible damage to the competitive structure of industry, through discrimination against small firms, which results from it'. Concern about the effects of the reference practice on the independent retailer has continued to be expressed.

3.10. When the Bolton Committee reported, independent retailers accounted for well over half of all retail turnover and for 43 per cent of turnover in the grocery trade. By the time the present reference to us was made the share of independent retailers had fallen to 47 per cent of all retailing and about 34 per cent of the grocery trade. A new phase in retail price competition began with Tesco's 'Operation Checkout'[2] and was followed by price-cutting initiatives by other large retailing organisations. These led to further pressures by the largest multiples on their suppliers for improved discounts and to increased competitive pressures in the grocery trade. By 1979 the independents' share of the grocery trade had declined to about 31 per cent (see Appendix 1, Table 5).

3.11. Commercially collected statistics limited to packaged groceries show that the market share of the independent sector has declined to about 16 per cent (see Appendix 1, Table 11). Figures that have been published in

[1] Report of the Committee of Inquiry on Small Firms (Cmnd 4811).

[2] In June 1977 Tesco abandoned trading stamps and cut their prices in a widely advertised act of policy.

the trade press and elsewhere of the market shares of the large grocery multiples, in terms of packaged groceries, indicate that the market share of the three largest grocery multiples may now exceed that of the independent sector and the Co-operative societies put together.

3.12. We recognise that retailing is a most complex and diverse activity and generalisations can only be made with qualification. The changes which are so striking in the grocery trade have not affected all trades equally and in other types of retailing, such as petrol, price discrimination, as indicated in this Commission's recent report[1], has been prevalent in circumstances widely different from those of the grocery trade. However, we have, as suggested by the Department of Prices and Consumer Protection (see paragraph 1.1), particularly examined the grocery trade as a test of the general effect of the reference practice on the public interest.

[1] Report on the Supply of Petrol by Wholesale (see Appendix 3).

## CHAPTER 4

# Differences in suppliers' prices and special benefits

4.1. We examine in the present chapter the various ways in which suppliers may differentiate the prices and other terms on which they do business with different retail customers, and the extent of such differentiation.

4.2. The information contained both in this and the following chapter is based mainly on surveys which we have undertaken pursuant to this inquiry, but we have also examined information contained in published sources, including reports of this Commission and of the Price Commission. Details of relevant reports of this Commission are provided in Appendix 3. In the case of petrol, we wrote to a selection of wholesalers to ask them to what extent their discount practices had changed since this Commission's report on petrol[1] was made, and we have included in Appendix 3, paragraph 36, a summary of their replies. A summary of references to discounts to retailers in reports of the Price Commission is contained in Appendix 4.

4.3. It was plain from the outset that we could not carry out an exhaustive investigation of the terms on which suppliers to the retail trade do business. Not only is the field far too vast but the terms on which business is done are continually changing. We therefore decided to investigate the prices and other terms on which manufacturers of selected products had been conducting their business with different retail customers and with wholesalers. The object was to obtain information about the forms of the practice and about its extent in the sense both of its prevalence and its degree; and we therefore selected products in most, but not all, of which we expected to find the reference practice. In the first instance we addressed questionnaires to the manufacturers of toothpaste, baked beans, paper handkerchiefs and ladies fine-gauge hosiery. Later, in the light of the results obtained, we made similar inquiry of manufacturers supplying cigarettes, bread and flour confectionery, biscuits, canned beer, refrigerators and paint. In addition we conducted a small-scale survey of the buying and selling prices for most of these products of shops in three widely separated localities. The results of these various surveys are summarised in Appendices 5 and 6.

4.4. The manufactured products referred to in the preceding paragraph accounted for about $11\frac{1}{2}$ per cent of all retail expenditure in 1976[2]. In addition to the selected products the manufacturers approached were asked to give information in respect of the other products which they supplied along with the selected products (see Annex A to Appendix 5). Apart from paint, we did not investigate products already dealt with in other reports either by this

[1] See paragraph 3.12 and Appendix 3.

[2] Source: *Family Expenditure Survey* (Department of Employment). We estimated retail expenditure by reference to the definitions in the Standard Industrial Classification Minimum List Headings 820 and 821, with the addition of retail sales of motor cars, motor cycles, petrol and oil, and coal, coke and miscellaneous other fuels.

Commission or the Price Commission[1]. In view of the fact that wholesalers are important suppliers to retailers, we addressed a questionnaire also to a number of wholesalers in different trades of which the results are summarised in Appendix 7.

4.5. We did not investigate the supply of fresh foods such as meat and vegetables, fruit and fish. These accounted for about 10 per cent of retail expenditure in 1976.

4.6. Although we have been able to supplement the information described above with evidence from a variety of sources, including other companies, trade associations and the trade press, the information we have obtained must be regarded as illustrative rather than comprehensive. If we had undertaken further enquiries, we should no doubt have found further forms of price differentiation and discrimination. Moreover, smaller suppliers have generally been less responsive to requests for information than large suppliers and the experience of smaller companies is therefore under-represented.

**Published terms**

4.7. Manufacturers and wholesalers usually make available to their retail and other customers information about their prices and other terms by the issue of a price list. Such lists may simply give a single price for each item, or they may indicate a number of prices such as a trade price and a recommended retail price. Different prices may also be given for different quantities delivered[2] (that is, according to the size of the 'drop'). Sometimes prices for different drop sizes are specified, but frequently what is published is a scale of discounts to be applied to a basic price[3]. Less frequently, a list price is used as a basis for a scale of surcharges, diminishing with size of order.

4.8. The following discounts may be given in addition, or as an alternative, to delivered quantity discounts:

(i) Discounts related to total purchases over a period or to the size of the account; for the purpose of calculating these discounts the whole range of the goods supplied may be aggregated, or only part of the range. Volume discount of this kind frequently appear in wholesalers' price lists.

(ii) Discounts for prompt payment.

(iii) Discounts to retailers who comply with specified arrangements for stocking, promoting or displaying the manufacturer's goods.

Some manufacturers who do not issue trade price lists issue scales of discounts off a recommended retail price.

[1] However, the Price Commission undertook an examination of toothpaste after we had begun our own inquiry and in addition they initiated a number of investigations of individual companies with whom we had already been in touch. Some of these companies supplied information to the Price Commission which they had supplied to us, and this is summarised in the relevant Price Commission reports.

[2] If the amount delivered is less than that ordered for delivery, many suppliers allow discount according to the amount ordered where the shortfall is not the customer's fault.

[3] A number of companies whose price list provides for different prices for larger quantities told us that in practice the great majority of their customers qualified for the best terms and that the proportion of business done on the poorest terms was small or even negligible.

4.9. In the industries we examined, manufacturers' list prices included delivery and in most cases the same list price applied to all areas of the United Kingdom. Some wholesalers imposed a delivery charge for small quantities.

**Unpublished terms**

4.10. Most manufacturers negotiate with at least some of their customers special terms which are more favourable than the published terms. We found a significant number of manufacturers who do little business on their published terms[1]. We also found several large manufacturers who publish no prices of any kind but negotiate net prices individually with every retail customer. Wholesalers, on the other hand, appear to operate more commonly within their published terms. The more common types of unpublished terms are described below.

**Favourable terms for delivered quantities**

4.11. These may take the form of charging for a smaller delivered quantity, or for a number of separate smaller delivered quantitites, the published rate for a larger delivered quantity. Such concessions generally favour those large multiples which accept branch delivery. The price advantage to the large retailer who accepts delivery direct from the manufacturer to his point of sale may be material. We discuss this question at greater length in paragraphs 5.9–5.10.

**Other special discounts or prices**

4.12. Special discounts or prices tend to be related to the overall size of the customer's account, large accounts normally being accorded better terms than small accounts. They are sometimes given either in substitution for delivered quantity discounts, where applicable, or in addition to them. They are usually negotiated but sometimes result from the application of manufacturers' internal scales. Negotiated discounts normally take account of the overall relationship with the customer.

4.13. Although special prices are usually arrived at by allowing discounts off published prices, we have found a number of cases where special net prices are negotiated in substitution for published prices. This practice is found, for example, in the canned beer trade where the differing incidence of duty and the fact that different customers buy different mixes of a brewer's products militate against across-the-board percentage discounts. In some cases, net prices are individually agreed or more than one price list is in use. One brewer estimated that, on a weighted average basis, his lowest net prices were about 15 per cent less than his list prices and about 8 per cent less than his average prices. Paint manufacturers also negotiate what are in effect net prices with individual customers. Most of the larger paint manufacturers have discontinued the issue of price lists and operate solely on the basis of internal lists.

[1] However, a willingness to negotiate terms with individual customers may on occasion undermine confidence in the manufacturer's pricing practice to an extent which damages his sales. A supplier in this situation may sometimes find advantage in publishing the terms on which he trades.

At the time we made enquiry, one manufacturer operated with 20 internal lists, his lowest prices being about 33 per cent below his highest; another used 10 lists with a price spread of up to 25 per cent as a basis for negotiations. Even allowing for the fact that little business was done by these manufacturers on the basis of their highest prices, the effective range of their net prices was wide.

**Retrospective discounts or rebates**

4.14. The most common type of retrospective discount is frequently termed an 'overrider'. One or more overriders may be accorded by the manufacturer subject to the fulfilment of certain conditions by the customer. The most usual condition is the achievement of a pre-determined sales target, or there may be a series of ascending targets attracting ascending rates of discount. Sometimes other performance criteria are used. Overriders[1] may be granted in respect of all sales on the achievement of the agreed threshold or thresholds, in the current or the preceding year, sometimes expressed as a percentage addition above the previous year's sales, or they may apply only in respect of sales beyond the threshold[2]. They are typically, but not invariably, calculated in respect of the whole range of products purchased from the supplier, over and above any concessions on invoiced sales. Sometimes what is termed an 'overrider' may be negotiated on the basis that it is firm irrespective of the volume of sales (or other conditions); in such cases it has the character of what we have described as a 'special' discount. In the grocery trade, the overriders accorded by manufacturers generally appear not to exceed $2\frac{1}{2}$ per cent, but higher amounts may apply when the percentage is calculated only in respect of sales beyond the threshold. Some ladies fine-gauge hosiery manufacturers, at the time we made enquiry, gave overriders ranging up to 8 per cent or more.

4.15. Discounts which are contingent on the buyers' current performance can, in the nature of the case, only be ascertained retrospectively. As they cannot be shown on the invoice but involve a payment by the supplier to his customer at the end of the period to which they apply, they are perhaps more accurately termed rebates. The payment by the supplier, is frequently made in the form of a credit note.

4.16. The borderline between discounts which are contingent on the performance of the buyer and those which we have described as 'special' cannot be drawn exactly. For example, some suppliers reduce a discount based on past performance during its operative period if the customer's current performance is clearly falling short of that expected when the discount was agreed. Although discount already given in such cases is not clawed back (that is to say, any reduction in the discount accorded can apply only to sales during the remainder of the period) this is a case in which a special discount is in effect contingent on current performance. In other cases, a performance threshold may be set so low that the discount conditional on it may be regarded as certain rather than contingent.

[1] For further discussion of overriders, see paragraphs 6.28–6.35.

[2] Under some arrangements, goods of which the sales qualify for the purpose of determining whether the sales threshold has been achieved do not themselves qualify for a discount where their price has specifically been agreed to be net.

### Favourable credit terms

4.17. Formally accorded preference in credit terms is relatively infrequent but many manufacturers told us they did not apply their credit terms strictly, so that in practice some customers enjoy longer credit than others. The bargaining power of a customer influences the attitude of at least some manufacturers towards enforcement of their terms. His financial strength (or weakness) may be another factor. Wholesalers in the delivered trade appear not only to give shorter credit than manufacturers but to be stricter in enforcing their terms.

### Special promotions

4.18. The primary object of special promotions in retail outlets is to draw attention to the supplier's goods, to induce their purchase by customers who do not usually purchase them and, as a longer term objective, to induce new customer loyalty. They frequently involve price reductions, or their equivalent, by the supplier. The following are examples of types of promotional activity which may involve such price reductions:

(*a*) A discount to the retailer in return for his agreement to reduce his own margin in order to promote particular goods at a special low price.

(*b*) A discount in return for an undertaking by the retailer not to sell at more than a special low price. Unlike (*a*) this need not involve any reduction in a retailer's margin.

(*c*) Promotions specially designed either for an individual retailer account or for a voluntary group ('tailor-made' promotions). All or part of their cost is borne by the supplier. Usually they are accompanied by agreed advertising in the media.

4.19. Special prices given by suppliers in connection with promotional schemes are sometimes given for long periods or are repeated frequently. In such cases, the promotional activity merges into general price competition.

4.20. Special promotions may give rise to differences in suppliers' prices to different customers for a variety of reasons. Where promotions are organised on a regional, as distinct from a national, basis suppliers' prices to retailers in some regions become lower than in others. They may be offered by the supplier only to one retailer customer or voluntary group or to a limited number of retailer customers. Where the promotional terms are offered by the supplier to some retailer customers but not others, there is usually price differentiation. Moreover some retailers may elect not to take the promotion where the terms are conditional on a contribution from them, particularly if it is onerous. It may often be the smaller retailer who cannot accept the terms, particularly where the product is a major proportion of his business.

### Disposal of seasonal and other surpluses and ends of lines

4.21. Where the manufacturer makes a product for which the demand is seasonal, at times of low demand he faces the choices of letting stocks increase, varying production or selling surplus output at low prices. In the case of refrigerators, for which there is a relatively large demand in the summer months, we found that some manufacturers made special deals or contracts to deal with off-season surpluses, though no single pattern emerged. One manufacturer, for example, negotiated special prices with selected customers known to have the storage capacity to accept stock out of season. Another offered extended credit (which might subsequently be converted into a price reduction) or sought to phase special 'own label' contracts so as to keep factory capacity fully loaded at all times. Another offered price reductions to all his customers.

4.22. Similar arrangements affecting the supplier's prices to different customers may arise in the sale of an obsolescent product when a new model is about to be introduced.

**Benefits not involving reduced prices**

4.23. Some special benefits are associated with promotional activity including the following:

(*a*) account advertising support, a contribution to retailer advertising which benefits the supplier's products;

(*b*) promotional fees, fees to cover part or all of a retailer's cost in entering a joint promotion with a supplier;

(*c*) coupons, a discount or promotional payment given to a retailer to fund part or all of a coupon scheme involving the supplier's products;

(*d*) payments in return for a guarantee of immediate distribution in all the retail outlets of a particular chain;

(*e*) off-shelf display, payment in return for arranging special displays in addition to normal shelf displays;

(*f*) new distribution account, a payment in return for the guarantee of distribution of a product not previously stocked by a certain customer.

4.24. Other types of special benefit involving payments or the rendering of services by the supplier to his customer are[1] also provided by many suppliers, for example:

(*a*) shelf-filling, labelling and/or price-marking services;

(*b*) provision of training of sales staff;

(*c*) special delivery services;

(*d*) provision of shop equipment;

(*e*) special credit facilities or loans;

(*f*) supply of goods in special containers to customers' requirements.

**Measurement of differences in price and other terms**

4.25. On a simple view, for the purpose of ascertaining the extent of differences in terms, it is necessary only to discover what is the highest price and what is the lowest price at which a supplier sells a particular product, and

[1] Various types of special benefit are referred to in paragraph 8.18, Appendix 2, paragraphs 17, 22, 23 and Appendix 15, paragraph 15.

express one in terms of the other.[1] But such information may tell us little. The least favourable terms accorded by a supplier may apply to only a small proportion of his customers and the fact that most of the supplier's customers enjoy the same or similar terms may be more significant than the fact that a few do not. Moreover, the extent of the differences (against whatever price they are measured) may be greater as between some customers than others, but the lesser difference may be more significant than the greater because it affects a larger number of customers or a larger proportion of the supplier's business.

4.26. A measure of the extent of differentiation, let alone of discrimination, in price or other terms cannot safely be expressed numerically without much qualification. However, for the purpose of getting some indication of differences in the terms accorded to different customers, we asked manufacturers of some of the products we investigated to work out the cost to them of the special terms listed in paragraph 4.29 which they gave in respect of their national brands and how much of this was incurred in relation to their sales to each of their ten largest retail customers. Table 4.1 summarises the results for twelve major suppliers[2] in 1977.[3]

4.27. Table 4.2 shows the total cost of special terms given by 15 major manufacturers to the three largest and most rapidly expanding multiple chains in respect of their national brands (that is, 'own label' sales are excluded).

4.28. In interpreting Tables 4.1 and 4.2 account must be taken of the difficulties to which we have referred. It will be appreciated that the figures relate to all the products of each manufacturer on the basis that it is his total relationship with the customer that is significant, and that different products and mixes of products are covered. Companies applied their own methods, which may not be comparable with one or another, for estimating the costs of making the calculations and the various special benefits.

4.29. We also asked manufacturers which of the following types of special terms they accorded and what the overall cost to them was:

(i) special prices or discounts, including concessions on quantity discounts;
(ii) retrospective rebates or overriders;
(iii) special promotions;
(iv) contributions to retailers' advertising;
(v) provision of shop equipment;
(vi) shelf-filling and/or price-marking services;

[1] In order to ascertain the prevalence and degree of the reference practice it would also be necessary to ascertain the extent to which price differences are attributable to cost differences, the subject of the next chapter.

[2] The suppliers include manufacturers of biscuits (5), cake (2), beer (2), baked beans (1), paper handkerchiefs (1), and dentifrice (1).

[3] A few manufacturers supplied figures for 1976.

(vii) provision of sales staff at own expense;
(viii) a privileged delivery service;
(ix) special credit facilities or loans;
(x) others.

TABLE 4.1 **Analysis of the cost to 12 manufacturers of special terms to their top 10 retail customers**

| | £ million | % |
|---|---|---|
| (*a*) Total sales by these suppliers | 963 | |
| (*b*) Cost of special terms as % of (*a*) | | 6·6 |
| (*c*) Total sales to top 10 retail customers of each supplier | 311 | |
| (*d*) Cost of special terms as % of (*c*) | | 8·7 |
| (*e*) Total sales to top 4 retail customers of each supplier | 206 | |
| (*f*) Cost of special terms as % of (*e*) | | 9·2 |

TABLE 4.2 **Special terms received by three largest multiple chains**

| | (*a*) Total of 15* mfrs' sales of national brands to: £'000 | (*b*) No of times reported amongst top 4 retailer customers† | (*c*) Cost to 15 mfrs of special terms to these retailers £'000 | (*d*) (*c*) as % of (*a*) | (*e*) No of times out of 15 reported amongst top 4 retailer customers in respect of special terms§ |
|---|---|---|---|---|---|
| Tesco | 87,045·0 | 13 | 7,270·4 | 8·35 | 10 |
| Sainsbury | 21,430·8‡ | 2‡ | 1,666·0‡ | 7·77 | 6 |
| Asda | 49,773·7 | 10 | 3,517·6 | 7·06 | 10 |

*Notes*

* The suppliers comprise manufacturers of biscuits (5), cake (2), baked beans (3), beer (2), dentifrice (2) and paper handkerchiefs (1). Table includes information obtained from 3 manufacturers whose returns were insufficently complete for inclusion in Table 4.1.

† This column relates to the number of times (out of 15) in which the multiple chain named was no lower than fourth in a list of the supplier's largest customers ranked in terms of turnover.

‡ The low figures reflect the relatively high proportion of 'own label' sales to Sainsbury, which are excluded.

§ Those manufacturers who completed questionnaires fully showed the cost to them of the special prices and other terms which they granted to their largest customers in respect of their national brands (see paragraph 4.26) and this cost could be expressed as a percentage of the invoice value of total sales of national brands to each. These customers were then ranked according to the percentages.

4.30. The replies we received from manufacturers are not easily summarised. There was great variety in charging practices. Difficulty was also experienced in allocating particular marketing expenditures to particular expenditure categories. Table 4.3, which indicates the total costs of special terms of manufacturers supplying certain products and their analysis by type, should be interpreted with these difficulties in mind. It is especially hazardous to attempt comparison of the size of special terms in relation to turnover between products because of special features relating to individual trades that would distort such comparisons. For example, no adjustment has been made to exclude excise duties from the turnover figures for canned beer and cigarettes. It should also be borne in mind that the figures relate to manufacturers' total turnover, and not their turnover of the particular product.

TABLE 4.3 **Costs of different types of special terms**

| | Total cost of special terms as percentage of turnover (%) | percentage breakdown between expenditure categories of total cost of special terms | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | (i) Special prices or discounts | (ii) Retro-spective rebates or overriders | (iii) Special pro-motions | (iv) Contribu-tions to retailers' adver-tising | (v) Provision of shop equip-ment | (vi) Shelf filling and/or price marking | (vii) Provision of sales staff | (viii) Privi-leged delivery service | (ix) Special credit facilities or loans | (x) Others |
| Biscuits | 8·6 | 47 | 13 | 30 | 4 | 1 | 5 | — | ** | — | ** |
| Refrigerators | 4·7 | 35 | 19 | 7 | 18 | 2 | — | 10 | 1 | 2 | 6 |
| Cigarettes | 0·4 | 7 | 7 | 61 | 2 | 17 | 2 | 1 | — | — | 3 |
| Cake | 3·5 | 17 | 7 | 24 | 4 | ** | 7 | — | ** | — | 44 |
| Canned Beer | 5·3 | 98 (i)–(iii) | | | 2 | — | — | — | — | — | — |
| Unweighted average (excl Canned Beer) | — | 27 | 12 | 31 | 7 | 5 | 4 | 3 | — | 1 | 14 |
| Unweighted average (incl Canned Beer) | — | 74 (i)–(iii) | | | 6 | 4 | 3 | 2 | ** | ** | 11 |

** Less than half of one per cent.

## CHAPTER 5

# Cost savings by suppliers and the extent of discrimination

5.1. The practice referred to us arises when a supplier does business with some customers at a lower price than with other customers, and when the savings, if any, in his costs of supplying customers enjoying the lower price is less than the difference in price.[1] It also arises when special benefits are provided to some customers but not others and the value of the benefit or benefits is not accompanied by a corresponding cost saving to the supplier. This chapter is concerned with the phrase in our reference 'where the reduction [in price] or the value of the benefit cannot be attributed to savings in the supplier's costs'. It describes those costs of the supplier which may vary as between one customer and another, the extent of such variations, and the extent to which such variations have been quantified by manufacturers or are capable of quantification. It refers to unquantifiable or intangible cost factors and to the relationship between cost savings and type of discount. It is based mainly on a study of the grocery trade but we also attempt to assess the extent of the practice in relation to all the individual products we investigated.

5.2. All assessments of cost savings depend to some extent on estimates and assumptions, although some cost savings can be estimated more accurately than others. Our approach has been to consider the extent to which estimates of cost savings have been made and how reliable they are.

5.3. When addressing our questionnaires to manufacturers (see Appendix 5) we asked them what cost savings they took into account when giving more favourable terms to some retailer customers than to others. Their replies to this question and the results of discussions we had with a selection of the respondents are summarised in Appendix 8. We consider below the types of cost saving to which reference was made.

**Savings in distribution costs**

5.4. Distribution costs include some or all of the following: processing customers' orders, loading the goods at the factory, transporting them to a regional depot or a customer's warehouse, handling the goods at a depot, invoicing them and re-loading them for delivery to the customer's premises, and unloading them. There are two stages in most distribution systems (except where perishable or fragile goods are delivered direct by the manufacturer to the retailer): transporting the goods from the factory to a central point and their radial delivery from that point in the quantities or 'drop sizes' required at the retail outlet. Manufacturers sometimes themselves only carry

[1] This may be compared with the provision in the United States Robinson-Patman Act which states: 'Nothing herein contained shall prevent [price] differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the different methods or quantities in which such commodities are . . . sold or delivered'.

out the first stage, delivering, usually by the lorry or container load, to the central warehouse of the customer, who may be either a multiple chain or a wholesaler. The customer then assumes responsibility for making up loads for delivery to the point of retail sale. Alternatively, the manufacturer may transport to his own depot and carry out the radial delivery function himself. When he delivers to the point of retail sale, whether via a depot or direct, he may offer the retailer shelf-filling and other services. Distribution may also be carried out by specialist carriers hired by the manufacturer.

5.5. The cost to the manufacturer of distributing his goods, expressed as a percentage of sales value, depends on a number of factors. The weight or bulk of the goods relative to their value is one obviously important factor, as is the distance they have to be conveyed. Some products require more careful handling than others, and for certain goods, such as frozen products, specialised vehicles are required. Other factors are the proportion of his sales which the manufacturer delivers to the point of sale and his average size of drop. The cost of delivery, as a percentage of sales value, varies from product to product, and may also vary as between different suppliers of the same product.

5.6. Examples of the cost to the manufacturer of transport to a central warehouse or depot ('trunking') and radial delivery are given in paragraph 22 of Appendix 8. 'Trunking' does not, in general, give rise to material differences in costs as between one customer and another for the same product, and when such differences arise they are relatively easy to calculate. More material differences arise in radial delivery, depending on a variety of factors, and their estimation is more difficult. For example, the general experience is that it is expensive to stop a vehicle to make a drop, but the cost of stopping depends greatly on the efficiency with which the individual customer actually receives the goods. A particular problem is the customer who sometimes refuses to accept delivery, so that transport must return on another day. The relationship between cost and distance to be travelled is affected by differences in traffic conditions. Another problem of costing arises where different mixes of goods are delivered to different customers. This is of relatively little significance where (as, for example, with grocery products) the different goods are packed in similar containers with similar weight/volume/value ratios, but it does matter, for example, to those brewers who use the same transport fleet and depot system to deliver to both on-licence and off-licence customers whose product requirements are widely different. The system of charging according to delivered quantities or drop size takes such factors into account, when it does so, by averaging techniques. We are also aware of instances where different suppliers share a common transport organisation, a situation which must raise the problem of cost allocation. A more general difficulty is to decide which distribution costs should be regarded as variable and which as fixed. In the short term, most of the costs of a supplier operating his own system of depots and vehicles are fixed. In the long-term most of them are variable.

5.7. However, in spite of the difficulties of estimation, examples given us by manufacturers suggest that the spread of delivery costs as between different customers can be substantial and that in principle it can support, in the terms of our reference, a correspondingly substantial spread of prices (see Appendix 8, paragraph 21).

5.8. Less than half the manufacturers we consulted had attempted to assess differences in their costs of distribution and nearly all of those who considered it practicable to measure cost savings expressed reservations about the degree of accuracy which could reasonably be achieved (see Appendix 8, paragraph 3).[1] Hardly any of the wholesalers whom we consulted on this point had tried to estimate differences in the cost of delivery to different customers, although at least one leading wholesaler in the delivered grocery trade operates a system, based on a detailed cost study, of retrospective discounts according to the amount delivered to each branch or shop over a period.

**Manufacturers' terms for branch delivery**

5.9. Many manufacturers prefer to deliver their national brands direct to the retail outlet rather than to a central warehouse, whether belonging to a wholesaler or to a multiple chain. Direct delivery may be necessary when products have to be delivered fresh. Bread, for example, is invariably delivered direct from the bakery to the shop and not through an intermediary. Biscuit manufacturers also prefer direct delivery partly to ensure that their product is delivered fresh and undamaged. Frozen foodstuffs and ice cream must be kept in refrigerated conditions from factory to consumer. However, a more general reason why a number of major manufacturers supplying the grocery trade deliver, or prefer to deliver, their branded goods direct to the retail outlet is their belief that it promotes sales. Contact with the local manager or proprietor helps them to ensure that they know what his problems are and that their goods are in stock and are well displayed. They may be able to arrange for their goods to be displayed more prominently or to be given more shelf space, particularly where a shelf-filling service is offered in conjunction with branch delivery. These manufacturers consider that branch delivery enables them to maintain higher levels of sales of their branded goods in the shops which they service in this way. Manufacturers' preference for branch delivery does not, however, extend to 'own label' goods for which they have no promotional responsibility.

5.10. One of the consequences of this preference of certain manufacturers for delivery of their own brands to the point of sale is that they may not charge the retailer the additional costs, or at least all of the additional costs, that they incur by so doing. Many wholesalers told us that they were unable to buy national brands on terms comparable to those obtained by multiple retailers (see Appendices 7 and 9). The reason most frequently given for this was that they were charged the same price for delivery by the lorry or container load 'trunked' direct from the factory as the multiples are charged for part-load drops to individual stores, or alternatively that the price the wholesalers

[1] The report of the Price Commission on United Biscuits (UK) Ltd (see Appendix 4) comments (paragraph 3.12) that there are difficulties in identifying the costs incurred in meeting the patterns of demand generated by different retailers, or groups of retailers. 'Even if it were possible to identify all the costs there would be practical limitations on the extent to which they could be taken into account in a pricing structure for a frequently purchased product selling to a very large number of retailers distributed over the whole country.'

were charged reflected only a part of the manufacturer's cost savings from not having to deliver to individual shops. The delivered trade wholesaler, for his part, still has to incur the costs of delivering the goods to his customers (or, in the case of cash-and-carry wholesalers, the customers have to incur the costs of collection).[1] It is contended by wholesalers that this situation, which is referred to as the 'drop shipment problem', discriminates against them, and therefore against the retailers who depend on them for supplies. We make further reference to this question in paragraphs 7.16–7.17.

**Savings in the cost of visiting salesmen**

5.11. It is customary for manufacturers who deliver their branded goods direct to the point of retail sale to employ a sales force to keep in close touch with the individual shops or branches. Some manufacturers, for example of cigarettes, employ salesmen to call on the larger retailers who buy through wholesalers as well as on those that buy direct. The cost of maintaining a national sales force may in some cases exceed the cost of physically delivering the goods and considerable differences may arise in the cost of servicing different accounts. For example, where orders are taken from the central office of a multiple chain, local visiting may by agreement be dropped.

5.12. Some manufacturers make estimates of the cost of servicing different accounts in terms of the salesmen's time devoted to them. In the nature of the case, such estimates cannot be precise. However, the cost to the manufacturer of servicing a small account is likely to be higher, proportionally to turnover, than the cost of servicing a large account, particularly where the large retailer accepts delivery centrally in bulk instead of at the point of retail sale. Although the costs incurred by the manufacturer in maintaining a sales force are incurred for his own benefit as well as for the benefit of his customer, savings in those costs in relation to particular customers would appear to permit corresponding reductions in the prices to those customers without giving rise to the reference practice.

**Administration**

5.13. Under this heading fall such items as order processing, billing and debt collection. Some manufacturers seek to estimate cost savings arising in this field. It appears that a multiple chain ordering centrally can save the manufacturer some thousands of pounds annually. One specific example, given to us by a refrigerator manufacturer as an extreme case, showed a saving of 0·5 per cent (£28,000 on an account worth £5·7 million). Allocable cost differences as between one customer and another can therefore arise in the field of administration but we believe that their importance will usually be small relative to the other types of cost savings which we have so far discussed.

**Savings in production costs**

5.14. Manufacturers generally attach great importance to maintaining sales volume because of the importance of this for their unit costs and, therefore, profits. We discuss the effect of this consideration on competition between

[1] Table 5 of Appendix 7 contains information on the gross margins of delivered and cash-and-carry wholesalers.

manufacturers in the next chapter (see paragraphs 6.7 and 6.12). In the present context we consider whether a reduction in the supplier's unit costs achieved through making additional sales to a particular buyer can be regarded as a cost saving in the terms of our reference.

5.15. Where the supplier, for whatever reason, charges the same price to all his customers, he has to take account of the fact that any reduction he may make in his prices for the purpose of increasing his sales would apply to all his sales. However, price discrimination enables the manufacturer, on the basis that a concession to an individual customer may not have to be conceded to other customers, to consider the effect on his net revenue of a price concession to that customer in isolation. In the competitive conditions which we describe at greater length in the next chapter (see paragraphs 6.3, 6.9 and 6.19), he may decide, to deal with a particular customer on the basis of a price that makes only a contribution to his fixed costs because, if the sale was not made, there would not even be this contribution. In our view, the contribution which additional sales to an individual customer may make to a supplier's fixed costs cannot be regarded as a cost saving in the terms of our reference since the fixed costs, by definition, have already been incurred.

5.16. Relevant savings in production costs may nevertheless arise in relation to sales to some buyers but not others where some buyers enter into contractual commitments to purchase specific volumes over a period. Except for 'own label' products manufactured to the specification of the customer, such contractual commitments appear to be uncommon in the grocery trade[1] where the practice is for the manufacturer to produce for and sell from stock. However, where a retailer customer commits himself to buying specific quantities of a manufacturer's national brand over a future period, this may also benefit the supplier by reducing his risks and enabling him to plan his production with a greater degree of assurance than he could in the absence of the commitment. However these cost savings are difficult to measure and are unlikely to be significant unless the forward commitments cover a substantial proportion of the manufacturer's production.

5.17. Although forward contractual commitments by retailers and wholesalers for supplies of grocery national brands are not the usual method of purchase, the regular negotiations which most grocery manufacturers enter into with their larger retailer and wholesaler customers typically involve exchange of information about the prospects of, and conditions for, particular sales volume being attained over the following twelve months. Multiple retailers have emphasised the help which in their view their negotiations give the manufacturer in planning his production schedules and reducing his risks in committing himself to the procurement of materials. Some manufacturers

[1] However, we understand that one of the largest multiples may place firm orders for up to three months, and one brewer told us that, exceptionally, a large customer contractually guaranteed a large volume off-take over a period. Outside the field of groceries, a large discount warehouse dealing in electrical goods told us that it put out base load orders for up to a year ahead, and no doubt there are many other examples. There are, of course, arrangements in some trades by which retailers under franchise or other agreements are tied to particular suppliers. Such arrangements involve special relationships between the retailer and his supplier.

agree that large customers may help them in this way. Others, however, expressed the view that it was better for their business to be spread so that excessive dependence on a few large buyers was avoided. More significantly perhaps, a survey conducted by the Food Manufacturers' Federation (see Appendix 10) revealed a view held by most of those consulted that the increasing share of large customers in food manufacturers' sales had 'weakened the security of the companies' production base'. The budgets discussed between manufacturers and selected large customers do not generally obviate the manufacturer's need to produce for stock for the purposes of meeting the demands of the general body of his customers as and when they arise.

5.18. The degree of reliance which the manufacturer can place upon his customer's forecasts and indications may also depend on that customer's style of business in that some customers may see greater advantage than others in establishing a reputation for reliability in dealing with their suppliers. However, whatever the style of business that may be adopted, the supplier is bound to feel vulnerable to the extent that he believes that one of his largest customers may switch purchases with little or no notice. Nevertheless, where there is good faith on both sides, the pooling of information and co-operation on the likely volume of sales may be of some help to manufacturers in effecting cost savings even where there is no contractual commitment on the part of the customer. Such cost savings cannot readily be measured.

**Other cost savings to the supplier from doing business with some customers but not others**

5.19. In their evidence to us, summarised in Appendix 11, large retailers suggested that the terms on which a manufacturer agreed to do business depended on a number of factors some of which were quantifiable but others, by their nature, were not and their evaluation was therefore a matter of commercial judgment. Examples of the factors put to us as unquantifiable are indicated in paragraph 20 of Appendix 11.

5.20. Such factors exist but do not necessarily act to reduce the costs of supplying retailers who are the beneficiaries of the most favourable terms. For example, the evidence we have been given does not suggest that all large retailers pay more regularly or promptly than other customers, or that the arrangements of all large retailers for receiving goods at their branches are more efficient than those of some smaller multiples or independent retailers. It appears to us that few of these factors are of great significance in terms of the practice.

**Off-season sales etc**

5.21. The reference practice may also arise in relation to concessionary prices to selected customers for out-of-season sales or for 'ends of lines' or for goods no longer in production to which we refer in paragraph 4.22.[1]

[1] In this connection it is of interest to note that the Robinson-Patman Act (section 2(*a*)) excludes 'price changes . . . in response to changing conditions . . . such as . . . actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process or sales in good faith in discontinuance of business in the goods concerned'.

### Other discounts

5.22. We have already noted (see paragraph 4.8) that some manufacturers give discounts to retailers who comply with specified arrangements for stocking, promoting or displaying their goods. Discounts of this kind are discriminatory in terms of our reference as they are not necessarily linked to cost savings as such, though they may be available to any retailer who is willing to accept the conditions on which they are given.

### Cost saving and type of discount

5.23. Relatively few manufacturers appeared to differentiate their prices by reference to delivered quantities alone. Most of those who did based their quantity discounts on estimates which they had made of the cost of delivering the different quantities but most of the wholesalers we surveyed told us that this was not practicable (see Appendix 7). Multiple chains are sometimes able to negotiate special delivered quantity discounts which are higher, relative to the size of the drop, than are their suppliers' published and generally applicable rates. Even published rates of quantity discounts may be 'skewed' so as to benefit a particular class of customer.

5.24. Some manufacturers who granted both delivered quantity discounts and discounts related to the size of the account, or the latter only, said that these accorded with differences in their costs in a rough and ready way, but others made no such claim. Some manufacturers favoured discounts related to the total value of the customer's purchases because of practical difficulties in or objections to the use of delivered quantity discounts, but in other cases a discount determined largely by reference to the size of the account might have only slight connection with cost savings to the supplier. Overriders tended to be regarded by manufacturers as a tool of marketing and not to be cost-related in any tangible way.

5.25. In view of the difficulties of estimating, or indeed quantifying, many types of cost saving to the supplier and the different practices and circumstances of different companies and trades, no clear picture emerges. It does not appear to us that some types of discount are necessarily better adapted than others to reflect the cost savings that may arise. In some cases, delivered quantity discounts may offer the best technique of reflecting differences in the supplier's costs of supplying different customers but other types of discount, depending on the circumstances, may be no less appropriate.

### Extent of the reference practice indicated by our product survey

5.26. In undertaking the surveys of various products our object was to discover not only the extent to which manufacturers did business with different retailer and wholesaler customers on different terms but also the extent to which such differences were cost-related, and what factors other than costs entered into differences in prices.

5.27. Although certain patterns emerged in relation to the particular products we investigated, we found that different suppliers, as might be expected, conducted their business in different ways, and what might be true of one supplier might not be true of another. Because of the paucity of cost information available in some cases and the impossibility of quantifying the reference practice, we can only give a general impression of the prevalence and degree of the reference practice in each case. It also has to be borne in mind that our inquiries were conducted over a period of two years during which the competitive scene was constantly changing and that it has continued to change since. Our findings were as follows:

*Cigarettes*

All manufacturers published scales of discounts based on delivered quantity and detailed cost investigations were undertaken. Subject only to promotional arrangements, published prices were observed with minor exceptions and there was little discrimination.

*Canned beer*

Some brewers differentiated prices mainly by reference to the size of the customer's account, others by reference to delivered quantities. Price and other discrimination was of uncertain extent.

*Baked beans*

The principal suppliers published lower prices for larger delivered quantities but special prices and overriders were generally available to the larger retailers and not all published scales were cost related. Preference tended to be given to delivery to the point of sale and suppliers gave more favourable promotional terms to their larger customers, though not all to the same extent. The extent of discrimination was appreciable but tended to fluctuate with changes in the balance of supply and demand.

*Dentifrice*

Most suppliers quoted lower prices for larger quantities and one gave lower prices only in this respect. Quantity discounts took account of differences in delivery costs but sometimes took account of other factors as well. Two suppliers accorded preferential terms to the largest retailers. Otherwise the extent of discrimination arising from special terms appeared to be modest, but, as the Price Commission found, clear conclusions are difficult to reach.[1]

*Paper handkerchiefs*

All the principal manufacturers published lower prices for larger delivered quantities, but only one of them claimed that they were based on estimated cost savings. Both special discounts and overriders were given to the larger retailer and wholesaler customers. The cost information available did not enable any firm conclusion to be drawn on the extent of discrimination but it appeared to be significant.

*Ladies fine-gauge hosiery*

There was a large number of suppliers and the nature of their business and their trading practices varied. Distribution costs were a minor element in total costs and when different prices were charged to different customers, often in the form of overriders, cost savings were rarely an important determinant of their amount. Although little detailed cost information was available, it appeared that there was significant discrimination by at least some suppliers.

[1] Report of the Price Commission on 'Prices, Costs and Margins in the Production and Distribution of Toothpaste', paragraph 5.63 (see Appendix 4).

*Biscuits*

Delivery and selling costs of the major manufacturers, who provided a nationwide delivery service to the point of retail sale, were high. Most suppliers accorded delivered quantity discounts, not always published, and, in respect of larger customers, discounts were mainly related to the size and importance of the customer's account. Overriders and target discounts were fairly generally accorded and there was a wide spread of prices. As, in addition, costs had not been widely investigated by many suppliers, there was the possibility of significant discrimination. The Price Commission indicated that, although United Biscuits' scale of discounts had not been based on cost estimates, it did not in practice favour or make concessions to larger retailers at the expense of medium-sized or smaller retailers.[1]

*Bread*

The lowest price at which the plant bakers sold their bread after August 1978 was about 14 per cent less than the highest price and about 8 per cent less than the average price to customers other than the major multiples. Part of the price difference could no doubt be attributed to a cost difference, but as differences in costs played little or no part in the determination of price differences most bakers did not attempt to estimate them. There was substantial discrimination.

*Paint*

Price differences largely reflected the importance of the customer's account and were mainly negotiated. Cost differences were taken into account but other factors, such as maintaining volume, tended to be more important. In view of the very wide spread of some suppliers' prices (see paragraph 4.13) discrimination appeared to be substantial.

*Refrigerators*

Discounts for delivered quantities were offered by some manufacturers, but discounts based on the size of the account, either in addition to quantity discounts or instead of them, were widely used. The cost information available was limited but there was little evidence of discrimination against either the wholesaler (usually called the distributor) or the smaller retailer as such. Many independent retailers of electrical appliances had formed themselves into buying groups which could be accorded terms related to the size of their collective account even where delivery was made to members individually. Two manufacturers told us that their terms to small retailers were uneconomic.

**Wholesalers**

5.28. As wholesalers continue to be important suppliers to retailers, we investigated whether, and if so to what extent, they discriminated among different retail customers. Wholesalers issue price lists which provide for lower prices for larger orders or deliveries and for larger volumes purchased over a period. Wholesalers supplying both voluntary group members and other retailers do not always supply both on the same terms. This appears to be

[1] Report of the Price Commission on United Biscuits (UK) Ltd, paragraph 6.6 (see Appendix 4). The calculations made by the Price Commission to establish their conclusion were not available to this Commission.

a form of discrimination, but it is not significant in our view as there is usually no bar to a retailer joining the voluntary group. Cash-and-carry wholesalers generally charge the same price to all their customers.

**'Own label' goods**

5.29. 'Own label' goods are usually supplied by the manufacturer at prices which, quality for quality, are substantially lower than those for his national brands because he has no responsibility for marketing them or promoting their sale and this effects important cost savings. For electrical goods the lower price charged by the manufacturer may also reflect different warranty liabilities. 'Own label' business is the subject of individual contracts between the manufacturer and his retailer or, as the case may be, his wholesaler customer. Where 'own label' products are concerned, the supplier's costs are affected by such factors as the length of the production run and its phasing in relation to other demands on capacity, as well as by the arrangements for delivery and stock holding, and it is to be expected that all such considerations are taken into account in the agreed price.

5.30. The evidence we have received from voluntary groups and other sources indicates that competition between manufacturers for the supply to wholesalers and retailers of 'own label' products, unlike national brands, does not in general involve discriminatory pricing. Occasionally, however, a manufacturer's contract to supply an 'own label' product may form part of a deal involving the price at which his national brand is sold to that customer. 'Own label' products are estimated to account for over one-fifth of the sales of grocery products.

CHAPTER 6

# Causes of discrimination and its effects on manufacturers[1]

**Development of competition**

6.1. The rapid development in recent years of the large multiple chain basing its business on selling large volumes of goods at low prices, to which we referred in Chapter 3, has led to major changes in retailing which have transformed relationships between manufacturers and the retail trade. When resale price maintenance prevailed widely, manufacturers' trade prices were embodied in generally applicable price lists subject to customary discounts. However, to an increasing extent, manufacturers' list prices have been regarded by their largest customers merely as a starting point for negotiation, and sometimes only a small proportion of business is done on a price list basis. While smaller customers continue in the main to be 'price takers', an increasing proportion of the output of many manufacturers is sold on negotiated terms.

6.2. It is impossible to generalise about the results of a mass of confidential negotiations, conducted with varying degrees of skill and success by the parties involved. However, the fact of negotiation is significant. It effects separation of markets as between those customers to whom prices are merely notified, and those with whom they are negotiated. Discrimination may arise as between different buyers and classes of buyers who may include large multiples, department stores, smaller multiples, discount stores, retail Co-operative societies, voluntary groups, wholesalers and others. The confidentiality of negotiation with different buyers makes it easier to grant different terms to different customers and helps to sustain such differences as may emerge.

6.3. We recognise that there are sectors in which the reference practice has not emerged clearly, for example, fresh fruit and vegetables, meat and fish for which there are wholesale markets.[2] At the other extreme, where there is only one producer of a particular commodity, or where one of the producers dominates the market, that producer may be in a sufficiently strong position to choose whether or not to charge the same prices to all his customers. Reports of this Commission contain a number of instances in which a dominant producer has chosen not to discriminate.[3] However, over wide areas of the grocery trade and other retail trades, the structure of supply tends to be 'oligopolistic', in practice dominated by a small number of large manufacturing companies, with or without a 'tail' of smaller manufacturers.

[1] Although wholesalers are important suppliers to retailers they are not, in general, important suppliers to large retailers, or to other customers with substantial bargaining power, and the questions discussed in this chapter are not therefore significant in relation to wholesalers.

[2] There may, however, be divergencies from market prices where, for example, a large retailer enters into long-term arrangements with a producer in which the retailer in effect accepts some part of the market risk of price fluctuation.

[3] For example, British Plaster Board (Manufacturing) Ltd, London Brick Company Ltd and Pedigree Petfoods (Mars Ltd).

With this structure, suppliers may tacitly avoid competition but when buyers emerge who are large and strong enough to bargain and to play one supplier off against another this approach becomes impracticable, at least so far as sales to the larger buyers are concerned, and competition for their business tends to become intense.[1]

## Concentration in manufacture and distribution

6.4. Some large retailers put it to us that their suppliers frequently held a larger share of the market for their products than any large retailer did, and that in these cases the supplier's negotiating power was at least as strong as that of the retailer. Accordingly we calculated the degree of supplier concentration for each of the products we investigated. The results given in Table 6.1 show that more than half the United Kingdom market for every product we investigated was supplied by the top five United Kingdom manufacturers of these products, and that for five out of the eleven products three-quarters of the market was supplied by the top three.

TABLE 6.1

| | *per cent of UK market held in 1977* by* | |
|---|---|---|
| *Product* | (*a*) *top three UK manufacturers* | (*b*) *top five UK manufacturers* |
| Cigarettes | 99 | 99 |
| Dentifrice | 84 | 99 |
| Biscuits | 80 | 96 |
| Paper handkerchiefs | 79 | NA |
| Bread | [78]† | [82]† |
| Baked beans | 71 | NA |
| Canned beer | 60 | 81 |
| Flour confectionery | 56 | 61 |
| Hosiery | 52 | 61 |
| Refrigerators | 48‡ | 58‡ |
| Decorative paint | 46 | 57 |

*Sources:* Business Monitor, Product surveys.

* The figures for some products are for 1976.
† This figure (for plant baked bread) includes an estimate for the market share of Spillers, which no longer produced bread at the time we sent out our questionnaire.
‡ The market shares for refrigerators are affected by the large volume of imports.

[1] See recent reports of this Commission summarised in Appendix 3, for example Ice Cream, Flour and Bread. There are also instructive reports not summarised in Appendix 3 because they are mainly not concerned with sales to retailers. For example, in their report on Insulated Electric Wires and Cables (HC 243, 1979), this Commission found that, while the cablemakers employed common list prices for general wiring cable, effective competition took place in terms of discounts and rebates negotiated with individual customers. These were far larger than could be accounted for by differences in the costs of supplying different sizes of customer and were attributable to the greater bargaining power of the larger wholesaler, but they provided positive evidence of competitive processes at work and enabled the Commission to conclude that competition was not restricted in any way (paragraphs 447–460). In their report on Ceramic Sanitaryware (Cmnd 7327, 1978) this Commission found that, although there was uniformity or near uniformity of list prices, competitive pressures in the industry rendered the manufacturers unable to resist the increased bargaining power of some of their builders merchant customers; and confidential rebates negotiated on an individual basis, together with other factors, led the Commission to conclude that the principal manufacturers were not acting so as to restrict competition (paragraphs 291–293). In their report on Diazo Copying Materials (HC 165, 1977), the Commission were satisfied that the granting of discriminatory discounts, made under pressure from larger customers, contributed substantially to competition in the industry and that their growth had not been against the public interest (paragraphs 257–258).

6.5. The concentration ratios of buyers were much lower than for manufacturers in spite of the rapid growth in recent years in the market shares of certain multiple chains. For many of the products we surveyed the top three retailers took less than 10 per cent of the market in 1977 though this figure will now be higher. The percentages were higher than 10 per cent for packaged groceries such as biscuits and baked beans and substantially higher for paper handkerchiefs, dentifrice and hosiery, but in no case did the degree of concentration on the buying side approach that on the supply side.

6.6. These results amply confirm the facts put to us by large retailers. However, it seems to us that they are an unreliable guide to that part of relative bargaining power which may be ascribed to 'muscle'. This is to be measured rather by the relative impact on buyer and seller of a failure to reach agreement on terms. So far as the manufacturer is concerned, such 'muscle' as he possesses lies in the strength of his products' appeal to the consumer whom it is the retailer's business to serve, and in the availability of acceptable substitutes. So far as the retailer is concerned, such 'muscle' as he possesses depends on the credibility of an underlying threat (whether expressed or not) to switch his purchases wholly or partially to another supplier.

**Influences on manufacturers' bargaining power in the grocery trade**

6.7. For the manufacturer who has committed large capital resources to production and who needs a high level of throughput to minimise his unit costs, sales to his largest retail customers are crucial. One such customer alone may account for the output of a whole factory. Manufacturers are therefore under strong pressure to provide special price reductions, promotion terms and other benefits in favour of the largest and most successful multiples whose business they can least afford to lose. Few food manufacturers are able to resist these pressures altogether, particularly in respect of products for which there is surplus production capacity. The generally static volume of sales of many food products in recent years has led to keen competition for market share.[1] In the effort to secure or expand the volume of sales, competition between manufacturers for the business of large multiples, particularly those which are expanding, has tended to intensify, and business with them may sometimes be accepted at a price which makes less than a full contribution to the manufacturer's fixed costs.

6.8. A feature of trading in the food industry has been the growing allocation of funds for financing trade allowances of one kind and another.[2] These funds (including what are sometimes called 'key account development' funds) are used in effect to 'buy' business through concessions on discounts, overriders, special promotion, and the like. The disposition of such funds (which, as indicated in Table 4.3, may amount to a substantial percentage of a food

[1] There has been similar competition among retailers (the so-called 'High Street price war'). This in turn has provided the most powerful motive for the exercise by these retailers of their bargaining power *vis-à-vis* their suppliers as success in this 'war' has depended in part at least on success in buying on the most favourable terms.

[2] Sometimes referred to as 'below-the-line' expenditure, in contra-distinction to 'above-the-line' expenditure which is promotional expenditure incurred by the supplier in selling his products by means of direct advertising expenditure in the media.

manufacturer's turnover) is an important source of the reference practice in these trades. Their size and disposition generally appear to indicate a switch of resources from inducements directed by the manufacturer to the consumer to inducements directed towards the distributor. There has, for example, been a decline in advertising in the media by both food and other manufacturers, relative[1] to that undertaken by retailers (see Appendix 1 Table 12).

6.9. The strength of the appeal of the manufacturer's product is a crucial element in his negotiating position. When competition in terms of price was largely precluded by resale price maintenance, competition in the grocery trade between manufacturers of branded products typically took the form of promoting the brand 'image'. While manufacturers have, in general, continued to seek to promote their brands, it appears that the increased size and bargaining power of large retailers has been accompanied by some general weakening of brand loyalties in food and related consumer trades. The position varies from product to product but some products which at one time were largely sold on the strength of a brand name have become what are frequently termed 'commodity products', that is to say, products for which the brand names have ceased to command any significant consumer loyalty. In so far as brand appeal is no longer reinforced by a fixed retail price in all shops, the price competition associated with the practice may have contributed to a weakening of brand loyalties.

6.10. Such weakening of brand names as has occurred reflects in part the fact that a number of large retail organisations both within and outside the grocery trade have gained a national presence ranking with that of their major suppliers and can effectively promote their 'own label' brands in competition with those of the latter.[2] 'Own label' products have been developed on a wide scale also by voluntary groups and large cash-and-carry wholesalers. Manufacturers can normally sell 'own label' goods profitably to distributors at prices lower than those of their national brands, because marketing and selling costs are not incurred (see paragraph 5.29). They may also be supplied by relatively small manufacturers with low overheads. The availability of retailers' 'own label' goods at low prices exerts continuing pressure on the prices of manufacturers' national brands, particularly secondary brands. Faced with this competition, many producers of secondary brands and even some leading brand manufacturers have decided to supply 'own label' products which compete with their own brands, particularly where they have spare productive capacity, although the policy of different manufacturers in this regard varies greatly.

6.11. We have already noted (see paragraph 6.8) that manufacturers' expenditure on advertising their branded products in the media has declined relative to that of retailers. Some grocery manufacturers are reappraising their policy on brand advertising, but the wider availability of 'own label' products marketed by well known retailers and distributors, and the reduction in perceived

[1] In absolute terms, expressed in constant prices, there was little change.

[2] Of the major multiples this process has been taken furthest by Marks and Spencer which markets only under its own brand name. Some large multiples, on the other hand, largely confine themselves to selling manufacturers' brands, whereas others, with differing degrees of emphasis, sell both.

differences between many competing brands, have tended to reduce the premium which the public has been prepared to pay for many grocery manufacturers' national brands, to increase price competition among suppliers and therefore to reduce these manufacturers' strength in negotiating with their principal retailer customers.

**Influences on the bargaining power of large retailers**

6.12. In the conditions in which the grocery trade has operated in recent years, the 'muscle' which the large and expanding retailer has been able to employ in negotiation with manufacturers has grown for reasons which are largely the obverse of those affecting manufacturers' negotiating strength. Thus the absence of growth in the market generally (and actual decline in the demand for some products such as bread) have brought about intense competition among manufacturers in order to maintain the volume of their sales. This particularly benefits the multiple chain which offers an expanding market for a manufacturer's products when sales to other customers may be falling. The growing size and prestige of certain large retailers have reduced their dependence on an individual manufacturer's products. This reduced dependence arises also out of the ability of multiple chains to employ skilled and resourceful specialist buyers whose knowledge enables them, if necessary, to seek out and introduce new products in competition with those of their existing suppliers and out of the ability of some large retail organisations to undertake certain types of production themselves as an alternative to purchase.

6.13. The bargaining strength of the large multiple retailer does not depend entirely on 'muscle'. The skill and knowledge of his buyers are distinct from the underlying strength of his negotiating position. His bargaining strength may also derive in part from positive advantages to his supplier of dealing with him. Many of the services provided by manufacturers to large retailers on concessionary terms or for little or no charge, such as branch delivery and shelf-filling, are provided for the purpose of promoting sales. The multiple retailer is regarded by many manufacturers as a more effective medium than the independent retailer for promoting sales and for marketing new products. We were told, for example, that the multiple retailer offered a 'shop window in the High Street' and that the manufacturer's goods are advertised by their presence on the former's shelves, particularly when prominently displayed. Special promotions can often be more simply and effectively arranged when they are negotiated and agreed with a central office covering a large number of outlets than they can be through a wholesaler or voluntary group or direct with a number of independent retailers, and the results can be more easily monitored and assessed. Thus, offers of special terms of one kind and another are volunteered as well as solicited and the multiple retailer expects, and often obtains, special discounts and other benefits which may be substantial in return for his co-operation in promotions, particularly if they are exclusive to the manufacturer.

6.14. However, just as some large retailers told us that they do not accept benefits such as branch delivery and shelf-filling, special promotions involving temporary price reductions might conflict with the policy of some large retailers of offering what they call 'constant low prices'. Such retailers are frequently able to negotiate long-term deals[1] as substitutes for concessions in connection with special promotions. Moreover, not all manufacturers, particularly outside the grocery field, took the view that the large multiple retailer was the most effective medium for promoting their goods. For example, some manufacturers of refrigerators and other electrical goods considered that the smaller retailer promoted their goods just as effectively. One refrigerator manufacturer rewarded by special discount terms those retailers who were willing to display his goods permanently and maintain a full range of stock, largely irrespective of their turnover. It is interesting to compare arrangements of this last mentioned kind with the policy of Black and Decker Ltd, described in a report by the Price Commission,[2] of giving special support to independent retailers who stocked a full range of its products including new products, a policy which may have reflected the room for manoeuvre which it enjoyed as the dominant supplier. It is evident that no clear line can be drawn between preferential terms which are a reflection of positive commercial advantages to the manufacturer and those which arise from the exercise of 'muscle' by the retailer.

**The changing balance between buyer and supplier**

6.15. In considering the effects of powerful buyers on the competitive situation, it has to be borne in mind that relationships are never static. We have made general comparison with a situation typical up to 25 years ago, in which manufacturers mainly set the prices at which they sold. This pattern was never universal (nor is it absent today) but, where it existed, manufacturers were able, within limits and even in the absence of resale price maintenance, largely to ignore any variations in their customers' bargaining power. In these circumstances competition was restricted in ways which were often not to the best advantage of the consumer. The increasing importance of large buyers, especially the multiple chains, and the growing extent of special negotiations have increased competition between suppliers, particularly in terms of price. The growth of the bargaining power of certain buyers has tended to exert its greatest immediate impact on manufacturers whose brand names have been weak and in respect of products for which production capacity has exceeded demand. But in such cases the competitive pressures must inevitably bring about further changes. At some stage, where prices have been forced below economic levels, they must be brought more closely into line with the costs of efficient suppliers, following elimination of any excess productive capacity, so that an unequal trading relationship tends to be redressed. In the case of bread, the withdrawal of Spillers strengthened the bargaining position of the remaining plant bakers, even though this has continued to be affected by falling demand.[3]

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[1] A 'long-term deal' does not necessarily involve a commitment by the retailer to buy a particular quantity over a period; it may merely signify that the manufacturer has agreed to a price concession over a period.

[2] Report on 'Prices, costs, and margins in the manufacture and distribution of portable electric tools' (paragraphs 2.22 and 2.23), see Appendix 4.

[3] See also paragraph 6.22 and Appendices 10 (paragraphs 14–19) and 12 (paragraphs 9–14).

6.16. We recognise that, even in situations where there is little excess capacity, the bargaining power of powerful buyers may be an influence in mergers between competing supplying interests. On the buying side, weaker buyers tend to be absorbed or replaced by stronger buyers.

6.17. In assessing the strength of retailer bargaining power and the significance of the trends towards concentration referred to in the previous paragraph, account has to be taken of the growing importance of the international context, particularly that of the EEC, in which negotiation takes place. On the one hand, the relative ease with which a large retailer can seek out new sources of supply overseas as well as in the United Kingdom increases the pressures which he can exert on his existing suppliers at home. As against this, however, exporting may constitute a significant means by which competitive United Kingdom manufacturers may be able to reduce their degree of dependence on large buyers in the United Kingdom. In this connection we note that some food manufacturers of, for example, biscuits and sugar and chocolate confectionery, export an appreciable part of their production, and in recent years have increased the proportion of their total sales which are made overseas (see Appendix 13, Table 6).

**Effects of the competitive situation on manufacturers' prices**

6.18. Concessions made by a manufacturer to strong buyers may be said to be commercially justifiable in the sense that, if they were not, the manufacturer would not have made them. His expectation in making or offering the concession is that he will be rewarded by selling more than he otherwise would have done. The additional business will make a contribution to his profits provided that the concessionary price is higher than his unit variable costs. But competition for large buyers' business tends to be very keen and, insofar as this means that the special discounts and other benefits which the manufacturer concedes in negotiation with them are at the expense of his profits, he has to consider whether and, if so, to what extent, he can find compensation. Essentially the manufacturer has two possible courses: he can raise his list prices, and therefore his prices to buyers not benefiting from special terms or benefiting from them to a lesser extent than more favoured buyers, or he can reduce his costs. Most manufacturers probably attempt both courses, though manufacturers' freedom to increase list prices was for a number of years limited by controls over prices.

6.19. When a manufacturer is considering a revision of his list prices he has to take account of all his costs, including the cost of negotiated discounts and of special promotions, as well as the effect of a change in his list price on his sales. He may also have to take into account the fact that some of his customers do not accept his list prices but treat them as a starting point for negotiation. However, the extent to which manufacturers can and do raise list prices (and therefore prices to customers not benefiting, or benefiting little, from special concessions) for the purpose of obtaining compensation for special concessions negotiated with more powerful customers is limited by a number of considerations. In particular, competition between manufacturers in many of the sectors supplying the retail trade has reduced the extent to which they have been able to increase prices to their weaker customers. In food manufacturing, lack of growth in the market, the widespread existence of spare productive capacity and increasing competition from imports, while they have exposed manufacturers to powerful pressures from their larger customers, have restrained their ability to raise prices to smaller customers. Moreover, some manufacturers may be deterred from doing so by a desire not to increase the difficulties of their smaller customers where these tend to be relatively more profitable. Bearing in mind the progressive increase in the proportion of most manufacturers' sales going to large buyers, it is difficult to resist the conclusion that the average prices received by manufacturers are, generally, lower than they would have been in the absence of the competitive situation with which the reference practice has been associated. Indeed, to conclude otherwise would imply that manufacturers generally have been able to recoup from the diminishing proportion of their business with smaller buyers the whole of the cost of their concessions to large and powerful buyers. It is not at all clear that prices, even to small buyers, have been raised in the sense that they are generally higher than they would have been in the absence of the reference practice.

**Effect of the competitive situation on profits**

6.20. Returns collected from selected companies by the Food & Drink Industries Council (FDIC) indicate that food companies' net margins on sales were on average substantially lower in the second half of the 1970s than they were in the first half. The Chairman of the FDIC Economic Committee recently stated:

> '... the food manufacturer in 1979 has an inadequate margin whether one looks in historic terms or in inflation accounting terms. The competitive nature of the industry means that it is well nigh impossible for him to get his prices up to a level that will provide him with cash flow adequate to finance both the development of his business and give adequate return on his investment.'[1]

One of the reasons adduced for the unsatisfactory position of food manufacturing was a decline in the manufacturer's bargaining position relative to that of the retailer. But it was also attributed to the generally static nature of demand for the products of the food manufacturing industry combined with widespread below-capacity working. Several manufacturers told us during the course of the present inquiry that their profits had fallen as a result of pressures from large retailers for favourable terms (see Appendices 10 and 14). In this Commission's inquiry into frozen food,[2] Birds Eye Foods Ltd stated that the trend to larger discounts to large retail customers had depressed its profitability to a serious degree. In this Commission's inquiry into ice cream, Glacier Foods Ltd[3] said that large discounts exacted by the bargaining strength of large retailing concerns depressed overall profitability for themselves and others supplying the retail grocery trades. A survey undertaken by the Food

[1] Mr Cleminson, Chairman of Reckitt & Colman Ltd, in his opening address to an FDIC conference in October 1979. Since then margins have fallen again (see Appendix 13, Table 3).

[2] Report on the Supply of Frozen Foodstuffs (see Appendix 3).

[3] Report on the Supply of Ice Cream and Water Ices (see Appendix 3).

Manufacturers' Federation indicated divided opinion among companies on whether the increasing proportion of their business done with large buyers had been beneficial to profitability (see Appendix 10, paragraph 7(a)).

6.21. The statistics of profitability, cash flow and capital expenditure given in Appendix 13 indicate that the experience of the food manufacturing industry was similar to that of British manufacturing industry generally up to 1977. In general, food manufacturers, like the rest of British manufacturing industry, have suffered a fall in profitability over the past ten years,[1] though there are wide differences in the fortunes of individual suppliers.

6.22. Even in well-authenticated cases such as bread (to which we refer in paragraph 6.15), where competition associated with the reference practice was accompanied by low profitability on the part of the suppliers, there must be doubt about the relative importance of other factors and indeed, doubt as to whether some of them can be disentangled. When our inquiry began, bread was supplied by three plant bakers operating on a national basis (Associated British Foods Ltd, Ranks Hovis McDougall Ltd and Spillers Ltd), two substantial plant bakers operating regionally and a number of others. Consumption of bread, particularly plant-baked bread, had for some years been falling and there was extensive excess capacity in the industry. Since there was little difference other than the name between the products of the plant bakers, their larger customers were well placed to play one supplier off against another, and this led to an exceptional degree of price discrimination in favour of large retailers and other large buyers of bread and to unprofitable conditions for the plant bakers. In April 1978 Spillers were forced, as a result of their losses, to withdraw from bread-making altogether, though some of their plant was sold to the two remaining national bakers. It was widely reported at the time that a factor in this situation was excessive discounting in favour of the larger retailers. However, declining demand and excess capacity were also important reasons for the low prices, and there were also labour disputes.

6.23. We accept that the competition with which the practice is associated has generally led to the manufacturers involved charging lower prices (see paragraph 6.19). The lower prices tend to favour those manufacturers with the lowest costs or those who are more successful in reducing their costs in the face of enhanced competitive pressure. In the process some manufacturers' profits will be adversely affected.

**Effect on investment and variety**

6.24. Just as there is uncertainty about the effect of the reference practice on profits, so there must be uncertainty about its effect on investment decisions since these reflect the expected profits to be derived from an investment project and the availability of the resources to undertake it. We encountered the opinion that the possibility of business being switched by large buyers creates

[1] As indicated in Appendix 13, paragraph 2, while official figures have not been published for years later than 1977, such later figures as we have seen from other sources, although not comparable, indicate that the real rate of return has tended to decline further and that there has been no substantial change in the relative position.

additional risks for manufacturers and it is possible that this may deter investment; but pressures by powerful buyers on prices may also stimulate investment undertaken for the purpose of reducing costs or for the development of products designed to strengthen the manufacturer's competitive position. While a number of manufacturers drew attention to the possibility that new investment might be discouraged, few asserted that this had actually happened. Moreover, large buyers may also induce investment in manufacture by providing a market for small suppliers ready and able to expand this business. Distinction has to be drawn between the effect on individual suppliers and the overall effect. Further, to the extent that lower prices arising from the practice may stimulate sales, this may have a positive rather than a negative effect on investment.

6.25. As in the case of investment, several companies pointed to the danger that pressures on profits and cash flow might lead to reduced expenditure on research and development, but hardly any said this had already occurred. In practice the food industry has in general continued to develop and market new products in spite of a high failure rate. One witness made the point that companies operating internationally are generally better placed than are companies operating in the United Kingdom alone to continue to spend money on product development in the face of low profitability in what for them is only one market.

6.26. Retailers themselves have augmented the range of brands on the market by introducing 'own label' products. Moreover, by seeking out new sources of supply they have contributed to an increase in the range and variety of goods available to the consumer.

**Effect on quality**

6.27. The enhanced competition between manufacturers with which the reference practice has been widely associated has undoubtedly induced some manufacturers to cut their costs by altering the specification of their products and, in some cases, such alteration will have adversely affected quality or performance. It seems to us, however, that, unless consumers are genuinely prepared to accept a reduced quality product in return for a lower price, reduction by the manufacturer of the quality of a branded product in an effort to meet price competition is likely to give only temporary respite from a problem of inadequate profitability and in the longer term is unlikely to provide an escape from overall uncompetitiveness, of which it may be a significant indication. In their evidence most manufacturers of national brands have emphasised the importance they attach to maintaining the quality of their products.

**Effect of overriders and other volume-related discounts on competition**

6.28. As we have pointed out in paragraph 6.19 and elsewhere, the practice has been generally associated with competitive conditions as between both manufacturers and retailers and has frequently been the means by which competition has taken effect. Before we leave this subject, however, we must examine the argument that discriminatory discounts of certain kinds sometimes bring about a restriction of competition by virtue of the form they take. Views of this kind have been advanced in reports of the Price Commission and this Commission, such as those we summarise in Appendices 3 and 4. For example, it has been argued that 'loyalty'[1] discounts, whereby special terms are linked to commitments by customers to buy the whole or a specified proportion of their requirements from a particular supplier, are against the public interest because they exclude other suppliers. Similar criticism has been made of the practice of granting discounts in return for a commitment to reserve refrigerated cabinet space for the supplier's products.[2] More generally, however, retrospective discounts geared to sales targets (overriders as described in paragraph 4.14) have also been held to be open to some objection because customers are thereby encouraged to concentrate their purchases on a single supplier and this restricts sales or even constitutes a barrier to entry by other suppliers, especially those with a narrow range of products.[3]

6.29. The terms of overriders are mainly negotiated with individual customers, and indeed the practice of according overriders in the grocery trade appears to have become widespread only with the growth of negotiations between manufacturers and large retail buyers in the 1950s and 60s. The competitive situation in which overriders tend to be given is one in which certain buyers, as well as suppliers, have bargaining power. At present, overriders are widely accorded to wholesalers and voluntary groups as well as large retailers.

6.30. Generally, the spread of overriders appears to be a manifestation of the trend for manufacturers in the grocery field to offer incentives and inducements to wholesalers or retailers rather than to the final consumer (see paragraph 6.8). Overriders have the advantage to the supplier that they are conditional on the buyer's performance. They thus enable the manufacturer to mitigate and indeed make less likely failure by his customer actually to purchase the quantities budgeted for in forward estimates (see paragraph 5.18). Against this, the retailer or wholesaler customer is frequently unwilling to anticipate receipt of the overrider in determining the price at which he sells the particular brands of the manufacturer in question to the consumer. Moreover, the buyer, towards the end of the period to which the overrider relates, may decide simply to purchase additional quantities temporarily for stock at the expense of his future purchases. Alternatively, he may make a promotional effort at the end of the period to sell more in order to achieve the sales target specified. When the latter course is adopted, we understand that manufacturers are sometimes willing to help with the promotional effort at

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[1] Although not involving sales to retailers, this Commission's 1970 report on Metal Containers (HC 6) and the Price Commission's 1978 report on Compound Feeding Stuffs (see Appendix 4) illustrate the point. They argue that such discounts are objectionable because not cost-related and a purchaser of a small quantity could obtain better terms, by reason of the exclusivity commitment, than a customer placing larger orders.

[2] See this Commission's report on Frozen Foodstuffs (Appendix 3).

[3] See this Commission's reports on Primary Batteries, Frozen Foodstuffs, and Cat and Dog Foods (Appendix 3) or the Price Commission's reports on Ever Ready (Great Britain) Ltd, Cadbury-Schweppes Foods Ltd, United Biscuits (UK) Ltd, Toothpaste, Floor and Furniture Polishes (Appendix 4).

the end of the overrider period, in which case they, in effect, pay twice for the additional business. In both these cases the overrider tends to distort the flow of sales.[1]

6.31. It would appear that overriders are more likely to have an anti-competitive effect where they are operated by a supplier with a considerable degree of market power[2] and that, where competing suppliers are evenly matched, or where overriders are employed by secondary suppliers in competition with a dominant supplier, any tying effect that may be obtained by lesser suppliers at the expense of others will last only for the period, typically three months or a year, to which the overrider relates. In the latter circumstances, after the end of the period each buyer can, without loss, switch to another supplier. There may even be advantage in doing so, if the first supplier seeks more stringent threshold conditions as the result of the attainment of a previous target. As we point out in paragraphs 6.6 and 7.13, the ability of large retailers to switch purchases is the principal source of their 'muscle'. We do not think that suppliers generally are able to secure the custom of these retailers more certainly by overrider arrangements than they can by other forms of price competition.

6.32. In considering the extent to which overriders may have a tying effect, regard must be had to the nature of the wholesaler's or retailer's business. The wholesaler is an intermediary whose business is to supply his retailer customers with what they want. If he fails to stock a product for which there is distinct demand, he loses trade to a competitor. The retailer has more freedom of choice, depending on his trading policy; but retailers who make it their policy to offer their customers a wide choice of products would not be able to concentrate their purchases on a single supplier.

6.33. Criticism has frequently been levelled against overriders and similar forms of discount when they apply, as is common, across the whole range of a manufacturer's products. It is felt that the manufacturer with a wide range of products can gain an undesirable advantage over his competitors and particularly over new entrants with a narrower range of products because he can use his wide product range as a base for subsidising marginal sales of all his products. It appears that this undesirable effect may arise where the manufacturer has an entrenched market for a large proportion of his products. However, in practice we find that manufacturers in groceries frequently tend to be market leaders in some of the products which they supply but not in others. Where the manufacturer does not enjoy a dominant position across a substantial part of his product range, the terms of the overriders he is able to negotiate may well not be an effective method of inducing his customers to buy the whole range of his products and may indeed permit selection with little penalty. This is not therefore a matter on which generalisation is possible.

[1] However, retrospective annual discounts may facilitate a smoother flow of orders in the special circumstances of particular seasonal trades and have been found to be justified for this reason. See in this connection this Commission's report on Ice Cream and Water Ices (Appendix 3) and the Price Commission's report on Toys and Games (Appendix 4).

[2] However, suppliers in the strongest market position frequently do not grant overriders. This Commission's report on Cat and Dog Foods provides an example of overriders being given not by the leading supplier but by the second supplier (see Appendix 3).

6.34. Perhaps the most serious criticism of overriders and other types of retrospective discounts is that they may constitute a barrier to new suppliers. Whether this effect occurs depends on the circumstances and in particular on whether the discounts are offered by a dominant supplier for the purpose of consolidating an entrenched position. As against this, we have drawn attention in paragraph 6.12 to the role of large retailer buyers in seeking out and introducing new sources of supply. However, if supplies from existing sources are available on satisfactory terms, distributors will have little incentive to seek out new sources. The terms on which overriders are available are an element in this.

6.35. It appears to us that all discounts, the rates of which are related in some way to the volume of the customer's purchases or the size of his account, may have the effect of encouraging the customer to concentrate his purchases, and to this extent they may be said to have some 'tying' effect. Even a scale of delivered quantity discounts may have this effect. Overriders and other discounts conditional on the buyer's specific performance may in certain circumstances have anti-competitive effects, especially when accorded by dominant suppliers, but in general overriders accorded to large retail buyers are to be regarded as part and parcel of competitive selling terms. They do not, in our view, cause these buyers to concentrate their purchases to a significantly greater extent than other types of discounts related to the volume of their purchases. The preferential terms which large buyers are in general able to obtain compared with small buyers appear to us to be of greater economic significance in the context of our reference than the particular form which a volume-related discount may take.

CHAPTER 7

## The practice in relation to the distributive trades

7.1. We now consider developments in the distributive trades in recent years with a view to evaluating the effects of the reference practice. Many studies[1] have been made of the changes which have taken place both in retailing and in distribution generally over the last quarter of a century but we are concerned to examine certain features which appear relevant to our inquiry. Additional detail is to be found in Appendix 1.

7.2. Published figures show that the total number of retail shops declined from over 580,000 in 1950 to about 350,000 in 1978. Independents accounted for nearly 80 per cent of the latter figure but their share in the total turnover fell from 67 per cent in 1950 to 52·5 per cent in 1979 while that of multiples rose from 22 to 41 per cent (the balance being represented by the Co-operatives).

7.3. With few exceptions, these changes have been apparent in all categories of retail store but to a varying extent. For instance, numbers of off-licences and radio and electrical shops were greater in 1978 than in 1950 and of furniture shops not much less, while the numbers of food and grocery, chemist, CTN, clothing and footwear and book shops declined considerably. While there were few trades in which the multiples' share of turnover did not increase, this was particularly apparent among off-licences, chemists, clothing shops, bread and flour confectioners, and grocery and provision dealers. The foregoing is a general account of the position but comparisons with earlier periods are affected by the diversification of outlets previously confined to limited lines of business and some changes in the census classifications.[2]

7.4. In this chapter we concentrate on the grocery trade. It will be recalled that it was originally suggested that we should do so (see paragraph 1.1)[3] and, indeed, by far the greatest weight of information and comment we have received relates to this sector, including a number of items in our product and price surveys (see Appendices 5 and 6). In this sector the adoption of the reference practice is of particular interest and concern, partly because

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[1] Some are listed in Appendix 19.

[2] See Appendix 1, notes to Table 3.

[3] Petrol is another area to which our attention was directed and which has given rise to some concern in relation to the position of the retail outlets, both independent (ie outlets in which no producer or wholesaler has a proprietary interest) and oil company-owned. However, the petrol market has a structure and problems very different from other retail markets and is subject to changing supply and demand conditions. Moreover the supply of petrol in the United Kingdom by wholesale has recently been the subject of a report by this Commission which we summarise in Appendix 3. This reference was limited to certain specified practices, one of which was that of discriminating between retailers in relation to the price at which or the terms on which petrol is offered or supplied to them. In these circumstances we have not considered it necessary to embark on a further examination of petrol retailing but we summarise the evidence we have received from petrol wholesalers and associations representing retailers in Appendices 3 and 15.

many of the products are everyday necessities and partly because it is in this field that the growth of large multiple organisations and the decline of the independent retailers have been especially marked.[1]

7.5. In 1950 the multiple chains accounted for only about 20 per cent of the grocery trade, with the remainder divided between the Co-operative retail societies (23 per cent) and independent grocers (57 per cent). By 1979 the multiple chains had achieved over 50 per cent of the trade. Their share of retail sales of packaged groceries had risen from just over half in 1974 to about two-thirds in 1979, of which about half was attributable to the largest three. Thus the share of the multiples has grown at the expense of the Co-operative retail societies and independents and that of the larger and more successful multiples has grown at the expense of all other retailers.

7.6. There has been a marked reduction in the total number of grocery shops, from over 146,000 in 1961 to some 69,000 in 1979. This is mainly due to a reduction in the number of independent shops, though there was a larger percentage reduction in the number of multiple outlets. This reflects the fact that, while there has been an increase in the average size of shop in all sectors, much the greater increase has been in the multiple sector, arising from the policy of some large multiple chains of concentrating their expansion in larger stores, some of them of the superstore and hypermarket type, while reducing the total number of their shops. This reduction has been accompanied by a substantial increase in the overall selling area of multiple grocers' shops. During the same period the number of Co-operative outlets also fell by over 50 per cent but the average size of store did not increase by as much as that of most multiples.

**Economies of operation**

7.7. Multiple retailing offers substantial economies of operation through centralised buying and promotion, its capacity to undertake the wholesaling function, the rapid turnover of stock at low prices (often within the period of credit obtained from suppliers),[2] advantages of scale in managerial and ancillary services and in the application of self service and other labour saving methods of store operation. Multiple chains have been well placed to operate very large stores which can achieve major savings in unit costs, while offering the customer a very wide range of products. Increase in store size has facilitated the policy of some multiples of diversifying into new fields of retailing, thus broadening their base and, in the case of grocery multiples, reducing their dependence on food (in respect of which margins have been low), although these operations have not proved without their difficulties. Generally it may be said that the successful multiples are those which have been able to respond to the new opportunities with enterprise and skilful management.

[1] Reports of the Price Commission have drawn attention to the decline in the share of sales of independent specialist retailers and the increase in that of multiples of, for example, children's toys and games, decorative paint, portable electric tools, floor and furniture polishes (see Appendix 4).

[2] The high rate of stock turn achieved by many multiples alleviates, where it does not obviate altogether, the need for increased working capital resulting from inflation.

7.8. A number of social and economic changes have contributed to the emergence of large retail outlets. The spread of car ownership has extended the catchment area and the increased employment of married women, the movement of population to new towns and housing estates away from old centres and the wider household ownership of freezers and refrigerators have shifted shopping patterns towards less frequent 'one-stop' shopping. It is significant that a number of multiples are following a policy of concentrating their business in fewer but larger outlets. Thus, while a number of the economies and the other advantages to which we have referred are related to the size of the outlet rather than the size of the organisation, the ability to provide them requires capital expenditure beyond the resources of the average independent retailer.

7.9. Grocery multiples do not all follow similar trading policies although an emphasis on price competition has been an essential element in most cases. Many engage in national promotional schemes covering a limited range of items selected for deep price cuts. Many pursue a substantial 'own label' policy on the repute of their own name while others rely to a greater degree on national brands. Some operate as limited line discount stores or freezer centres (which specialise in supplying the home freezer owner) while others pursue a policy of selling a wide range of brands and products. Whatever their trading policy, their large scale allows multiples to publicise themselves and their trading and pricing principles through the national press and other media.

7.10. Independent retailers are not generally in a position to operate very large outlets and the economies arising therefrom are not available to them. Moreover, in another respect the wholesaler/independent relationship gives rise to a less cost-effective method of distributing goods than the multiple chain. The wholesaler is not involved in a merely mechanical process of ordering, warehousing and, if he is in the delivered trade, distributing a limited variety of goods, but is competing for the business of his customers. In order to compete successfully, the wholesaler needs to carry a stock that is sufficient in terms both of variety and quantity to meet the differing needs of his customers and he may incur expenses, for example in the employment of a sales force, in promoting his business. Moreover, the average size of outlet he serves is smaller than a multiple branch. One of the main objectives of the formation, mainly in the 1950s and 60s, of voluntary groups (see Appendix 16) was to improve the competitiveness of the wholesaler and retailer members in the face of growing competition from multiple chains. A principal aim was to rationalise the wholesaling function by arranging that each retailer member should, as far as possible, be served by a single wholesaler instead of by a multiplicity of wholesalers, thus obtaining substantial economies in ordering, stockholding and delivery. However, the attempt to obtain the economies of operation of the multiple in the wholesaling function has been achieved only in part. This is mainly because there tends to be only a loose commitment on the part of the retail members of a voluntary group to buy from a group wholesaler. The retail members, unlike the branches of a multiple, are independent entities and they have continued, in spite of efforts to encourage group loyalty, to exercise their independence in the buying function as in other matters.

A large wholesaler in the grocery field estimated that multiple distribution, though with substantial individual variations, cost about one-third less than the corresponding wholesaler/independent operation.

7.11. Another important development in recent years in the field of wholesaling has been the growth of cash-and-carry warehouses. These have been particularly helpful to the smaller retailer for whom the task of collecting stock is manageable. They have also provided a flexible supplementary source of supplies to independent retailers generally. It is difficult to compare the economics of the delivered and cash-and-carry trades for the independent retailer but the rapid growth of the latter type of wholesaling in the 1960s indicates that it has fulfilled a real need. There seems little doubt that the availability of cash-and-carry facilities has kept in being many small independent shops which otherwise would have closed.

**Buying power of multiple chains and wholesalers**

7.12. As we have pointed out, manufacturers customarily accord more favourable terms to larger accounts than to small. These more favourable terms reflect cost savings to the supplier to a varying extent, but in the competitive conditions which widely prevail they frequently go beyond the savings which arise from supplying a large account compared with a small account. In the main, the effect of the reference practice in grocery retailing has been to benefit large organisations whether retailers or wholesalers.

7.13. Just as the wholesaler/independent operation generally fails to match the equivalent multiple chain operation in terms of costs, it also tends to remain less effective in the buying function, in spite of the formation of voluntary groups designed to overcome this weakness. Again, this largely reflects the fact that the wholesaler's customers make their own decisions on what they should buy and from whom. In the case of the multiple chain, the headquarters office normally decides whether a particular manufacturer's goods shall be stocked (or at least whether they shall be listed for stocking) in its branches. If it decides to 'de-list' or delete some or all of a manufacturer's products they will not be sold in any of its branches. The wholesaler, on the other hand, whether operating a delivered or cash-and-carry trade, who decides not to buy a particular manufacturer's goods for which there is a demand from his customers merely offers them a poorer service and his customers can, and do, go elsewhere for their requirements. He certainly cannot commit his customers, whether or not they are members of a voluntary group served by him, either to stock the manufacturer's goods or not to stock them. These circumstances make it more difficult for him than it is for the multiple chain to present the manufacturer with a credible or effective threat to switch his purchases.[1] Finally, wholesalers appear to be less well placed than are multiple chains reliably to forecast their future requirements to the manufacturer (see paragraphs 5.17–5.18).

[1] A consumer who cannot find what he wants in a multiple branch may go to another shop, and the multiples have to take this into account. However, the weakening of brand loyalties to which we refer in paragraphs 6.9–6.11 has reduced manufacturers' bargaining strength in this respect.

7.14. The formation of voluntary groups has tended to diminish these disadvantages but the fact that the wholesaler and retailer members consist of a collection of separate businesses which, while co-operating in some respects, retain their independence means that these disadvantages are not entirely removed. Thus, while the degree of co-operation which exists between group members may assist the group in negotiating with a manufacturer on the terms of, for example, a special promotion, the inability of a group to enter into a firm commitment that the manufacturer's goods will be stocked by every retail member during the period of the promotion, may reduce the value and effectiveness of the promotion to the manufacturer and therefore the terms he is willing to offer.

7.15. We have not found it possible to make quantitative comparison of the terms obtained by multiple chains and wholesalers respectively. Some wholesalers appear to be more successful buyers than others, just as some multiples are more successful than other multiples. For example, wholesalers with a large involvement in the catering trade may have more bargaining 'muscle' than those without this involvement because the wholesaler tends to have more power of decision in the catering field than in retail distribution. Again, special or traditional trade connections give rise to special terms to some wholesalers but not others. Moreover, the structure of the wholesale trade, like that of retailing, has been changing rapidly. We have referred in paragraph 7.11 to the rapid growth of cash-and-carry wholesaling. In addition, the growing pressure of competition from the multiple chains and the advantages of size in the buying function have not only stimulated the formation of voluntary groups but also a process of concentration and merger in grocery wholesaling to the extent that the trade is now dominated by a handful of organisations in the delivered and cash-and-carry trades. One large wholesaler may serve several voluntary groups (though most groups continue to be served by more than one wholesaler). Moreover, management companies have been set up, whose members include not only voluntary group wholesalers but also other wholesalers, and even large retailers, for the purpose of co-ordinating negotiations with manufacturers. Furthermore, several of the largest wholesalers are now members of groups of companies containing interests in retailing as well as in wholesaling; and, while the buying function may not be centralised in such groups of companies there is scope for exchange of information. Thus, one way and another, the bargaining power of the remaining wholesalers, whether in the delivered trade (mainly serving affiliated retailers) or in the cash-and-carry trade or both, has increased. However, the fact that the terms available to independent grocers are less favourable for many types of goods appear to be attributable in part to the inability of wholesalers to purchase such goods on terms comparable in all respects with those obtained by leading multiple chains.

7.16. A particular aspect of this inability is the 'drop-shipment problem' to which we refer in paragraphs 5.9–5.10. It is the subject of widespread complaint by wholesalers in the grocery trade. To some extent the problem appears to arise because the wholesalers of some voluntary groups are unwilling, save exceptionally, to negotiate special terms for branch delivery by the manufacturer to the retail members even when such terms might be offered. Such wholesalers take account of the fact that direct delivery by the manufacturer takes over their normal distributive function, while leaving them with invoicing costs and credit risks. However, this policy is not followed by all wholesalers in the grocery trade and special arrangements may be facilitated where the wholesaler is owned or controlled by the retailers served. Moreover, an unwillingness by some grocery wholesalers to negotiate special terms for branch delivery is paralleled by the policy of some major multiples of taking delivery in bulk at a central warehouse instead of at the point of retail sale. These multiples similarly suffer a price disadvantage, although possibly a smaller one, where the manufacturer is unwilling to concede the full extent of his cost savings resulting from this method of delivery. However, it also appears that a number of major manufacturers in the grocery field are willing to negotiate favourable terms for branch delivery to at least some multiple chains, but are unwilling to negotiate such terms with voluntary groups. The amount of the discrimination, however it arises, while it varies according to the manufacturer's pricing arrangements may be considerable.

7.17. However, there are some grounds for believing that these difficulties, which are largely confined to the grocery trade, may be becoming less important. There is, for example, the tendency of certain multiple chains to replace small retail outlets with outlets large enough to accept delivery in bulk. The bargaining power of wholesalers is tending to increase with increasing size (see paragraph 7.15). There is also the possibility that the pressures exerted by competition on manufacturers' costs may cause them to look more closely at their policy in this regard.

7.18. Where the independent retailer buys direct from the manufacturer without the interposition of an intermediary he is unable to obtain the benefit of large-scale purchasing. In the case of perishable goods such as bread, where direct purchase and delivery is the rule, the extent of the discrimination against the independent retailer may be substantial (see paragraph 6.22).

**Co-operative societies and independent retailers**

7.19. As we have already indicated (see paragraph 7.5), the competitive pressures exercised by the most successful multiple chains by virtue of their cost and price advantages have affected not only independent retailers but also smaller or less successful multiples and the Co-operative movement. With regard to the latter, while the retail societies have available the services offered by the CWS, the bargaining power of the CWS *vis-à-vis* manufacturers outside the movement tends to be reduced by the discretion exercised, particularly by the larger societies, to make their deals independently or in groups. We note that there has been considerable rationalisation and re-organisation of the retail societies, and their relation to the CWS, with the object and effect, amongst other things, of enhancing their bargaining power. The largest retail societies have some of the features of the multiple chain in terms of their purchasing and distribution arrangements, though most are regionally based and many outlets remain small. We do not believe that informed opinion would attribute the appreciable fall in the Co-operative retail societies' share of the grocery market over the last 25 years solely or even mainly to advantages of multiple chains in bargaining power.

7.20. The independent sector in grocery has not only been much reduced, both in numbers and in market share, but has tended to change in character. Some independent retailers have specialised in quality or exotic foods, health foods, delicatessen and other specialities, or on the needs of ethnic or other minority groups. An independent baker's shop may flourish because it is able to supply bread having qualities different from plant-baked bread. In greengrocery and butchery smaller shops appear to be widely operated by independent traders. Other independents may have longer opening hours or the advantage of location in country areas or in towns away from the main shopping centres or be able to rely on supplying people without convenient access to those shopping centres. A 'dual' market in grocery has tended to develop. As the shops of leading multiples increase in size but decrease in number they increasingly serve the high volume mass demand, while independents tend to provide a local 'convenience' outlet or cater for the occasional, specialised or minority demand. In this connection it appears that the impact of new superstores or hypermarkets has often been greater on the trade of large multiple and Co-operative supermarkets than on that of small outlets. Moreover, while the independent sector as a whole has continued to decline, a number of small supermarkets formerly owned by multiples have been taken over by independents.

**Effects of the practice on the structure of distribution**

7.21. As concern has been expressed by a number of bodies (see Appendices 12, 15 and 17) about the numbers of independent grocery shops which have closed down, we have to consider to what extent this has been due to the reference practice.

7.22. We have already referred to the economic advantages which their size confers on multiples as such, particularly their ability to operate larger outlets with lower unit costs (see paragraph 7.7). The policy of many multiple chains of closing their smaller shops is plainly not motivated by the reference practice, but by the very considerable economies and other advantages of operating large retail outlets.

7.23. Concern has been expressed about the closing of many independent shops in villages, but village communities have also tended to lose other amenities such as bus services and schools, losses which cannot be attributed to the reference practice. Investigations[1] which have been made into the difficulties of independent retailers and the reasons why they gave up their businesses, emphasise factors other than competition from multiple chains. Long hours, increases in rates, rent and operating costs and problems arising from VAT and other official requirements are among the reasons more frequently given. If a business cannot be sold, it ceases to exist. In addition, urban re-development has occasioned the closure of many small businesses.[2]

[1] See, for example, 'Small Scale Retailing in the UK' by John A Dawson and David A Kirby of St David's University College, Lampeter (Saxon House, 1979) and the results of research by the latter summarised in an article in *The Grocer* dated 17 November 1978.

[2] Planning considerations have also limited the scale on which very large shops have been developed.

7.24. Where insufficient profitability, for whatever reason, has brought about closure, the reference practice will often have been a contributory factor, bearing in mind the high proportion of retailers' costs represented by the purchase of supplies. In a trade such as grocery where net margins are low, small differences in buying prices may be crucial.[1] While the effects of the reference practice on differences in buying prices cannot be disentangled from the effects of other factors, we are of the opinion that it has contributed to those differences. Moreover the reference practice, by favouring large organisations, has assisted the expansion of those retailers who are best equipped to establish and operate large shops. It has also worked against the smaller shop by tending to disfavour independent grocers, whose shops are, on average, relatively small.

7.25. In our view, it seems clear that an important effect of the reference practice has been to encourage concentration in retailing and wholesaling into fewer hands. Where prices and other terms tend to favour large buyers, an unprofitable small retailer or wholesaler may be brought into profitability by merging with a larger retailer or wholesaler, without any benefit to operating efficiency. As a consequence, retailer and wholesaler organisations may, in theory at least, grow beyond the size at which they are most efficiently operated.

7.26. Many forces have been at work in the reshaping of the retail trades which has been so marked in recent years, and it is impossible to determine their relative influence over the whole field. As regards the reference practice, it appears to us that it has not been an influence which has initiated change, but rather that changes in its incidence and degree have been a consequence of other changes. Once successful retailers began to expand rapidly their bargaining power also grew and helped them to sustain and even accelerate their rate of growth.

7.27. To the extent that the reference practice has contributed to the reduction in the number of shops, whether in villages or urban neighbourhoods, it will have contributed also to the inconvenience or even hardship resulting therefrom for the minority of consumers who, for whatever reason, lack mobility. To the extent that this lack is associated with age, poverty or disability, such loss of local shopping facilities hurts those members of the consuming public who are most in need. The evidence of Age Concern and consumer bodies, summarised in Appendix 17, is relevant in this connection. So are the studies made by the Standing Conference of Rural Community Councils and other bodies, of the decline in the number of rural shops, especially independent retailers and Co-operatives (see Appendix 12). There is the further question whether the practice might cause prices in some smaller shops to be higher than they would otherwise have been, to the disadvantage of those largely dependent on such shops.

[1] For example, on the fairly generous assumption that a grocer's gross margin was 20 per cent and his net margin 2 per cent, a change of 2·5 per cent in his buying prices would be equivalent to the whole of his net margin.

**Prices**

7.28. This leads to the final matter we consider here, namely the effect of the practice on prices. We have already discussed the effect on suppliers' prices and have concluded that bargaining by multiple retailers and other large buyers serving the retail trade has led to prices to them being lower than they would otherwise have been and, further, that the extent to which manufacturers and other suppliers are able to finance lower prices to some buyers by higher prices to less powerful buyers is limited (see paragraphs 6.18–6.19). The question remains whether lower (and, where applicable, higher) buying prices are passed on to the consumer. In this connection, our area price survey (see Appendix 6) suggests that there was active price competition in those areas covered by it. The survey indicated, *inter alia*, that:

(*a*) correlations between buying and selling prices are reasonably close and, in particular, closer for multiples than for independents; and

(*b*) those multiples observed to be buying at relatively low prices tended to mark up prices less than other multiples and other retailers buying less favourably.

7.29. We have examined much other evidence bearing on the general question whether lower buying prices are generally passed on to the consumer. For example, the Consumers Association's magazine, *Which?* periodically reports results of its investigation into comparative consumer prices. Broadly speaking, though with much variation between shops, these show multiples to be cheaper than voluntary group retailers for branded goods, with the largest multiples and the hypermarkets among the cheapest. A much less clear picture emerges for fresh fruit and vegetables and meat.

7.30. In the case of branded goods it is clear that low buying prices are passed on where the reduction is part of a special promotion. Outside special promotions, manufacturers conceding price reductions to the retailer frequently seek an understanding with him about the price he will charge so that they have additional assurance that the low price to the retailer will be rewarded by increased sales. However, the benefit of the prices which the retailer may be able to secure can be passed on indirectly rather than be related strictly to the particular item in question. For example, it is common for retailers to charge very low prices for 'known value items', that is to say basic products such as (in grocery) bread, sugar and butter, which are so frequently purchased that the customer recognises a low price when he sees it. The retailer may also seek to attract custom by making a special feature of a particular product or group of products. If, as we are told, basic items are sometimes sold by a retailer at cost, or even at a loss, the retailer may charge a higher price for other products in order to obtain a satisfactory overall return. Moreover, different retailers aim for a different overall gross margin as well as, within that margin, different margins for individual products. Notwithstanding the emphasis which many multiple retailers have placed on price competition, these retailers differ in the convenience, the range and quality of the goods and the service which they offer. Even different branches of the same multiple chain may work to different gross margins.

7.31. Thus, although it is impossible to determine simply by following individual buying prices through to selling prices the extent to which the benefit of low manufacturers' prices is passed on by the retailer to the consumer, we are not in doubt that, generally speaking, some benefit is passed on to the consumer because, as we have repeatedly emphasised, competition between retailers continues. However, although retailing is possibly more competitive now than it has ever been, especially given the consumer's enhanced mobility, the degree of competition is less in some localities[1] than in others. We have discussed the possibility that the reference practice may have resulted in prices being higher to certain retailer customers than they otherwise would have been, even though the manufacturer's average price is lower (see paragraphs 6.18–6.19). Certain customers, in certain shops, may at times have had to pay more than they would have done in the absence of the reference practice. We have been unable to establish the point one way or the other, but in view of the intensification of competition in retailing in recent years, in part attributable to the reference practice, we think it unlikely that any such adverse local effect on prices has been significant. Of far greater significance to the consumer at large are the generally lower prices associated with enhanced competition among both manufacturers and retailers.

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[1] The Price Commission made a report in October 1975 on Food Prices in Outlying Areas (Report No 10). This concluded that they were overall somewhat higher than in more central areas but the difference on average was small, about 2·8p in the £, although certain items such as liquid milk, bread and branded grocery items were more expensive. The main reason for above-average food prices was that traders in outlying areas usually had too low a turnover to qualify for the best terms offered by the national food manufacturers whose discount structures were mostly based on volume and sometimes related to the annual volume of purchases and/or the achievement of a given sales target. The report also found that there were hardly any supermarkets in the areas studied and to some extent this explained the higher level of prices ruling there, since the movement of a supermarket into an area would tend to bring prices down.

## CHAPTER 8

# Remedies suggested

8.1. In the course of our inquiry a number of proposals have been made to us for action which might be taken to regulate the practice or alleviate its effects. We have also had occasion to examine certain measures which have been adopted in other countries. These, and the problems arising from them, we consider in this chapter.

**Proposals by witnesses**

8.2. For the most part our witnesses contented themselves with making suggestions in broad outline rather than in the form of a detailed scheme. A number confined themselves to criticising or complaining about the practice or aspects of it rather than suggesting that specific regulatory action should be taken. We were impressed by the emphasis laid by some who called for action on the difficulty of devising legislation that would be both simple and effective and on the paramount need to avoid any sort of cumbersome system of control likely to involve both government and industry in heavy enforcement costs and excessive administrative interference, itself liable, it was thought, to stifle competition or enterprise. At the same time, it was emphasised that, if any new measures were introduced, effective policing was essential to prevent the unfairness that would arise if some carried out their obligations while others succeeded in evading them. It was apparent that few would welcome legislation on the lines of the Robinson-Patman Act in the USA, in view of what they believed to be its complexity and rigidity.

8.3. We were not surprised to observe an absence of unanimity, or anything approaching it, on the part of our witnesses on the general approach to be adopted, still less on specific proposals. Considerable opposition was displayed by the multiples and their associations (see Appendix 11) to any interference with existing arrangements. As regards the manufacturing interests, only one representative body in the food and one in the non-food sector were specifically in favour of positive measures[1] but a number of individual manufacturers, especially those serving the grocery trade, made proposals for governmental action or expressed the belief that it was necessary. Others did not and a number were opposed to it (see Appendices 10 and 14). Most wholesalers appeared generally reluctant to contemplate legislation against the practice but were particularly insistent, as we have indicated, on the competitive disadvantages to them arising from the willingness of suppliers to grant 'drop shipment' facilities to the individual branches of the larger multiples (see paragraph 7.16) and a number of wholesalers (and some manufacturers) stressed the

[1] Federation of Bakers and the British Carpet Manufacturers Federation. The Food Manufacturers Federation made no proposals as an organisation but informed us of the results of a questionnaire to 15 member companies, pointing out that they should not be interpreted as being representative of the views of the Federation as a whole. The Food and Drink Industries Council thought that the Director General of Fair Trading should negotiate a code of conduct with the interests concerned (see Appendix 10).

desirability of suppliers publishing their trade terms (see Appendix 9). The Voluntary Group Association, representing the major groups, told us that they did not recommend at this stage the introduction of 'Fair Trading type legislation' (see Appendix 16). On the other hand the associations directly representing the independent grocery retailers, as well as a number of individual small and some medium sized concerns, more consistently favoured comprehensive measures of prohibition or regulation (see Appendix 15).

8.4. Manufacturers and others were emphatic that the main reason for the substantial growth in discrimination was the bargaining strength exerted by increasingly powerful retail organisations which, together with the pressures from competitors, left suppliers with no alternative to adopting the reference practice. Concern was similarly evident that the trend towards greater concentration within the retail trade would develop to a point at which a few large multiples would so dominate distribution, especially in grocery and related products, that competition might cease to be effective, to the detriment of consumers as well as manufacturers.

8.5. Proposals by witnesses were:

(*a*) the prohibition of all discrimination or of discounts and terms not related to costs or of special terms to individual customers outside the published standard discount scales of the supplier;

(*b*) the publication of all prices and terms, including all special terms to individual customers;

(*c*) price lists, discounts and terms including credit terms and promotional assistance to be registered with the OFT which would be responsible for determining whether they were justified on a cost basis, if called upon to do so by a competent authority or legitimately interested body;

(*d*) particular forms of special benefit granted by suppliers to their customers to be prohibited or discouraged, for example advertising and promotional assistance, favourable credit treatment, in-store services carried out by the supplier's employees (see paragraphs 4.23–4.24);

(*e*) the achievement of some or all of the objects described in (*a*) to (*d*) above by means of a code of conduct or practice promulgated by the interests concerned or by the Office of Fair Trading; and

(*f*) the modification of the Restrictive Trade Practices legislation so as to permit collective action to enhance the bargaining power of, for example, the smaller retailers.

There were suggestions that some of these proposals might be combined (eg (*a*), (*b*) and (*d*)) and others (for example (*b*)) adopted as a separate measure on their own. It was also pointed out that there needed to be provision for action against customers who induced or received concessions as well as suppliers who granted them. Proposal (*f*) falls into a different category from the others and was put forward by only one association, although the effect of the RTP legislation was referred to by other witnesses.

**Overseas legislation**

8.6. Appendix 2 contains an account of certain overseas legislation concerned with price discrimination (not usually confined to sales to retailers). It appears that, while a varying degree of attention is devoted to the practice in a number of countries, a broad distinction may be made between two types of approach, the selective and the comprehensive. Under the former, action may be taken against particular instances of price discrimination because, for example, in the circumstances of the particular case, they constitute an objectionable abuse of market power or of a dominant position, or involve severe damage to competition, or generally have detrimental effects on the public interest. Under the comprehensive approach (as in the USA and France) there is what amounts to an overall prohibition of price discrimination so that the enforcement of the law becomes essentially a matter of determining whether or not, subject to the relevant definitions[1] and criteria, the proscription has been observed, rather than whether or not the particular action in question is unacceptable in all the circumstances. We devote greater attention in Appendix 2 to the latter type because it constitutes a more far reaching element of regulation and occupies a more prominent place in the competition laws of the countries concerned, although it is a minority which have chosen to apply a comprehensive prohibition. As well as that in the USA, we describe the system in force in a number of other countries (Australia, Canada, France, Germany, Irish Republic) and the EEC.

8.7. We appreciate that there is not a hard and fast distinction in all instances between the two types of approach. For example, what is prohibited under the Australian legislation is discrimination which 'is of such magnitude or is of such a recurring or systematic character that it is likely to have the effect of substantially lessening competition' and the authorities have been at pains to stress that the crucial issue is whether the particular practice substantially reduces competition in the market, not whether a competitor is harmed. The EEC competition provisions (Articles 85 and 86 of the Treaty of Rome) are concerned with restrictive agreements (and concerted practices) and the abuse of dominant positions, and, in this connection, prohibit, *inter alia*, the application of 'dissimilar conditions to equivalent transactions', if trade between member states may be affected. Price discrimination has been treated by the EEC Commission as falling within the scope of this prohibition. The Act against Restraints of Competition[2] in the German Federal Republic adopts a limited approach in that it is directed against discriminatory action by market dominating enterprises, while some reliance is also placed in Germany on codes of conduct issued by trade associations with official encouragement for regulating forms of special benefit which may be granted by suppliers.

8.8. We have observed certain other features of interest in some of the overseas legislation. There is provision for action not only against suppliers but also against customers who have knowingly induced or obtained a prohibited discrimination although there do not appear to have been a great many instances in which this has been practicable. There is provision in some of

[1] In the US system, the relevant definitions include injury to competitors but this, while not applying to trivial discrimination, has been extensively applied (see Appendix 2, paragraph 37).

[2] Gesetz gegen Wettbewerbsbeschrankungen 1957, as amended.

the schemes for price discrimination to be justified on the ground that it has been adopted in good faith to meet terms offered to the customer by the supplier's competitors. There are various ways of taking action against the discriminatory provision of special benefits (see also paragraph 8.18). In two countries (France and the Irish Republic) there are limited requirements for the disclosure of prices and terms to all customers or to the authorities. There is also some scope for court action by aggrieved parties, notably the treble damage suits which play an important part in anti-trust enforcement in the USA.

8.9. A problem of particular difficulty appears to be the crucial matter of determining in particular cases whether a supplier's price differentiation is related to costs. In the past, the 'cost justification' provision of the Robinson-Patman Act has been regarded as very difficult to utilise because the cost data necessary to fulfil the degree of exactitude required by successive decisions of the courts have called for detailed and costly investigations and advice, without certainty that the defence could in the end be established. The 1978 circular expounding the 1973 law prohibiting price discrimination in France sets out detailed requirements and recognises that the assessment of relevant costs is difficult. By contrast the Australian Act permits discrimination which is described as making 'only reasonable allowance for differences in the cost or likely cost of manufacturing, distribution, sale or delivery'. A number of other regimes provide for broad criteria for allowable price differences apparently permitting flexible interpretation such as 'objective justification', 'good cause' or 'facts justifying . . . differentiation' and it is of interest that recent proposals to amend anti-discrimination laws in the USA and Canada have emphasised the desirability of permitting the supplier to make good faith estimates of cost differences based on reasonable business practice. These diverse approaches illustrate that there is no easy solution to the problem. Flexibility may avoid the rigidities which have been sometimes attributed to the Robinson-Patman legislation but only by entrusting to the discretion of the administering authority the application of general criteria to the particular cases.

8.10. We recognise that a system which applies in one country cannot simply be transplanted into another, having regard to differences in economic and social circumstances and the legal and constitutional arrangements within which the competition institutions operate. Whilst the experience of other countries in dealing with price discrimination does not suggest that comprehensive regulatory measures to deal with the reference practice cannot be devised or implemented, we doubt whether they can be described as completely successful. Indeed in some countries, as is apparent from Appendix 2, they have given rise to considerable criticism and controversy and it has been widely argued that, while failing to achieve the effects at which they aim (including, for example, the preservation of independent retailers), they have had a deleterious effect on competition, efficiency and prices both in the manufacturing and the distributive trades to the detriment of the public, as well as causing considerable uncertainty and imposing heavy compliance costs on companies and the authorities. At the same time, we note that such criticisms have not led to the discontinuance of the measures in question which continue to find support.

**A comprehensive scheme of regulation**

8.11. A scheme of this kind could require the prohibition of the reference practice or of special terms outside published discount scales (paragraph 8.5(*a*)) or require the publication of all discounts and individual terms (8.5(*b*)) or their disclosure to a competent authority[1] for individual examination (8.5(*c*)) or the prohibition of or control over particular forms of special benefit (8.5(*d*)). The essential point is that the requirement would apply generally, to the instances of the practice as defined, doubtless subject to a 'meeting competition' defence such as we refer to in paragraph 8.13, and it would not otherwise be necessary to judge whether particular instances were or were not acceptable in the circumstances of the case. In addition to enforcement by the OFT, such a scheme might include provisions enabling private persons to bring civil actions.[2]

8.12. We find it difficult to see how a comprehensive scheme could be effectively operated without imposing a heavy burden of compliance costs on traders and administrative costs on the authorities to an extent that would vary depending on which of the type or types of control referred to in paragraph 8.11 were adopted. Investigations into the detailed facts of particular cases might be required to determine whether the statutory requirements had been fully observed, especially in view of the considerable diversity of approach adopted by different suppliers in granting discounts and the complexity of their arrangements with different customers. The position would doubtless vary from time to time (and any particular set of arrangements might be short lived) and from area to area depending on general and local changes in market conditions and the competitive situation. Complaints would arise from wholesalers or retailers about better terms allegedly granted to their competitors and from suppliers about the switching of business, but there could be many reasons for these complaints and it would not be easy to decide which were justified.

8.13. It would seem desirable to include provision in any regulatory regime for justifying the practice as necessary to enable the supplier to meet competition. However, there are problems in determining how far a genuine 'meeting competition' defence would be justified in any particular case, including the question whether it would permit an aggressive price strategy to 'beat' as well as to 'meet' competition, the latter merely permitting suppliers to match competitive offers so leaving the initiative with the competitor. Moreover, there could be some risk of encouraging the exchange of price information between suppliers in the United Kingdom (seeking, for example, to verify alleged quotations by competitors), with adverse effects on competition between them.

8.14. Nevertheless, the defence would seem especially necessary in an economy with a high propensity to import. It has been put to us that if suppliers had to reduce prices to all their customers, when needing to reduce

[1] For purposes of convenience, we assume henceforward that any administering or enforcement authority would be the OFT which, in present circumstances, appears to be the obvious body, having regard to its functions and experience, to entrust with such responsibilities.

[2] There are already such provisions under existing competition legislation (Restrictive Trade Practices Act 1976 section 35(2), Resale Prices Act 1976, section 25(3)).

prices to only one or a few, the flexibility with which they could respond to import competition would be substantially impaired and, without the freedom to respond selectively, ground would be lost. Indeed, attempts to control discounts available to distributors might encourage recourse to imports from suppliers outside the scope of the jurisdiction to a greater extent than would otherwise occur.

8.15. A different question is that of deciding whether prices to different customers may legitimately differ because the transactions do not apply to 'like' goods. Problems might arise, for example, in relation to 'own label' goods or similar brands or products or versions of the same product with minor or even cosmetic differences between them. Indeed it has been suggested that an attempt to control discounts might artificially stimulate product differentiation or 'own label' operations.

8.16. More importantly, however, there are problems which arise from the basic requirement that price differentials must be related to costs to which we have already referred when considering the experience overseas (see paragraph 8.9). We set out in Appendices 5 and 8 evidence from United Kingdom suppliers on the attribution of their costs and we explore in Chapter 5 various aspects of cost saving in relation to differences in price. Generalisations about costing policy are difficult to make. Many companies do not in present circumstances feel under the necessity to conduct detailed or frequent cost relationship exercises in determining their price differentials so that an obligation to base price differentials strictly on cost would involve a major change of practice on the part of many suppliers. Doubtless many, especially the larger, companies can ascertain reasonably indicative average distribution costs for a quantity discount structure which adequately suffice for commercial purposes but most of the companies we consulted expressed reservations about the degree of accuracy which could reasonably be achieved (see paragraph 5.8). We have given an indication of our views in Chapter 5 on some of the problems involved and we refer to the difficulties of estimating or quantifying many types of cost saving (see paragraph 5.25). There is clearly scope for debate about cost saving, for example, in respect of production costs, the allocation of joint costs or cost savings from unquantifiable benefits said to be available from dealing with large retailers and other aspects of the matter. Overseas experience also suggests that there may be considerable room for argument and controversy about the cost justification of particular price differences and it seems likely that any attempt to require a strict relationship with identifiable costs as a justification for price differences would either impose a complex and costly burden on the parties concerned, as well as on the authorities, or militate against price differences which, in principle, might be cost-justified.

8.17. In our view it would be impracticable to introduce a system (see paragraph 8.5(*c*)) of notification and administrative assessment of individual discounts and terms. Companies would presumably have to supply the OFT with detailed and comprehensive information about their pricing policies and strategies, and also any other benefits in cash or kind and credit terms actually allowed in each case, as well as the changes in them which would continually occur. A very large number of notifications requiring considerable time and staff to process would be required, while the parties would be left in uncertainty about the admissibility of their terms. We note that this Commission concluded on an earlier occasion that this would impose a heavy burden on the public service and the industry concerned at a cost which would be unacceptably high.[1] We may add that, for these reasons and those referred to in paragraph 8.12, we feel that there would be major difficulties in devising for the reference practice, if that were proposed, a system of registration and judicial investigation like that adopted for restrictive trading agreements and resale price maintenance.

8.18. A different proposal to which we refer above (see paragraph 8.5(*d*)) relates to control over the various forms of special benefit. If there were a prohibition or regulation of discounts it would be essential to include special benefits within the arrangements, if only in order to prevent evasion. Equally, unless accompanied by such regulation, control over special benefits would appear to be of little advantage as a means of limiting discrimination, bearing in mind the ability of suppliers to provide effective concessions in different ways. However, to deal with special benefits raises problems of its own, not least that of how they should be measured for purposes of comparison, for example, between different benefits or 'packages' of discounts and benefits granted to different customers. In the USA, the Robinson-Patman Act lays down that they must be made available to all customers 'on proportionally equal terms' and we understand that this provision has made it necessary for the authorities to issue detailed guidelines of considerable complexity. Another approach adopted to some extent in Germany is to deal with them by a suitable code or codes of conduct (to which we also refer in paragraphs 8.29–8.30). Whatever measures were adopted for action against special benefits, there would need to be constant scrutiny to ensure that new forms of benefit were not being devised to avoid the regulations.[2]

8.19. We do not wish to overstate the difficulties of enforcement or to be taken as implying that the problems to which we have referred are wholly incapable of solution. The point is that on any realistic view of their magnitude enforcement would be costly and difficult. From a wider point of view, moreover, even if an effective and acceptable system of overall prohibition could be devised, it is necessary to consider the likely effects on competition between suppliers of controlling the reference practice by this means. We have already had occasion to refer (see paragraph 6.3) to the manner in which competition

[1] Report on the Supply of Petrol in the United Kingdom by Wholesale (see Appendix 3).

[2] The complexity of the problem is illustrated by the fact that, in connection with the January 1975 Bread arrangements officially limiting the amount of discount under the Bread Subsidy Scheme, discounts were defined as including the value of certain practices such as, *inter alia*, the provision of merchandisers and demonstrators in excess of 2 weeks in every 13 per retail outlet, advertising allowances to customers, gifts to customer management or staff related to increases in trade, provision of free bread to customers, increase in discounts on non-subsidised products, payments to customers as inducement to secure trade. Certain other benefits or advantages were not to be increased above the level prevailing on 3 September 1974. These included introductory offers, on-pack offers, salesmen's commission schemes, in-store fixtures and fittings, free or subsidised transport, extended credit terms, financing offers on products other than bread, retail customer incentive schemes. We understand that these arrangements proved difficult to administer and there were problems in achieving equitable treatment between different companies.

between suppliers in granting unpublished special concessions, terms or benefits acts as a means of breaking down otherwise rigid and parallel price structures and, indeed, more generally to the competitive situation among suppliers to the retail trades with which the practice has been associated (see, for example, paragraph 6.19). We note also that many overseas and United Kingdom observers have stressed the fundamental importance of unpublished discounts or special terms as a means of undermining price uniformity in oligopolistic industries. An overall prohibition of the reference practice may inhibit the employment of skills in bargaining and seriously damage pricing flexibility which may be said to be an essential feature of competitive behaviour, with adverse effects on price levels generally. There is also the risk of erecting barriers to entry or expansion by discouraging companies from undertaking selective campaigns with lower prices directed towards gaining new customers or penetrating new areas.

8.20. In this connection, we refer to the suggestion that companies should be compelled to operate on the basis of publicly disclosing all their discounts and terms (see paragraph 8.5(*b*)). This if it were adopted as a measure on its own, might avoid some of the difficulties referred to above, notably that of ensuring that prices were adequately cost-related, but it would be necessary to ensure that full details of all special terms and benefits granted to all customers (and the changes in them from time to time) were made public and problems of policing would remain. This would be burdensome but more generally there could be the result that, especially under conditions of oligopoly, such 'transparency' might lead to a tacit collective discipline resulting in a consciously parallel price policy among suppliers under which competition was significantly reduced. The insistence by some manufacturers (as well as by retailers) on the crucial importance of keeping their deals secret presumably reflects the fear that, if they were disclosed, pressure from others for comparable treatment would be strengthened and, while the exact effects of a publication requirement are difficult to predict, the likelihood is that there would be less competition.

**Selective investigation**

8.21. By contrast with an overall prohibition, under the selective approach the price discrimination exercised by a particular company or a number of companies or in particular trades or industries would be subjected to detailed examination in order to decide whether its continued operation was consistent with the public interest, with or without modification, in the light of all the relevant circumstances. The basic test might be whether the operation of the practice on balance had or was likely to have a damaging effect on competition which measures to regulate it could be expected to alleviate. For instance, the practice might be thought to be a manifestation of competition at the particular supplier's level, while distorting competition at the customer's level, and a detailed investigation might enable a conclusion to be reached concerning the bearing of the practice, on balance, on the public interest in the circumstances in question. At the same time, the costs and benefits of practicable remedial action, if necessary, and the form such action should take (whether applied to suppliers or customers or both), could be considered in the light of any special features (such as actual or potential import penetration) of the particular trade.

## Fair Trading Act, 1973

8.22. We understand that existing powers would enable cases involving price discrimination to be handled on the lines suggested in paragraph 8.21. Thus, references may be made to this Commission which would enable investigations to be conducted into the reference practice or the particular forms it might take on the part of a company supplying one-quarter of the market for the relevant goods (monopoly), or two or more companies doing so and so conducting their respective affairs as to 'prevent, restrict or distort competition' (complex monopoly) and there are suitable powers for the enforcement of any recommendations. Such references may be limited to a part of the United Kingdom and to particular practices including 'any preference given to any person (. . . by way of discrimination in respect of price . . .) in relation to the supply of goods' of the description specified in the reference. The powers exercisable by order for the implementation of the Commission's recommendations include that of declaring it to be unlawful to discriminate in prices or to do anything which appears to amount to such discrimination.[1] A monopoly reference would be limited to the particular company or companies but a complex monopoly reference could apply to a number of separate companies provided, of course, it is established that they are so conducting their respective affairs as to 'prevent, restrict or distort competition'. As Appendix 3 illustrates, there are precedents for the use of these provisions to investigate and reach conclusions about the reference practice as employed by one or a number of companies.

## Competition Act, 1980

8.23. The Competition Act 1980 extends the powers of control to cover 'anti-competitive practices' which are defined[2] as the pursuance by a person of a course of conduct which 'has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the United Kingdom or any part of it'. We understand that this comprehends the reference practice, of course insofar as it may have the specified effects.[3] Whether it does so in any particular case doubtless depends on all the relevant circumstances. That would be a matter for determination at the time but we note that there is no limitation, as there is with monopoly and complex monopoly references, to a one-quarter or above share of the market,[4] if turnover is £5 million or more. We also note that the investigations are required to be conducted within relatively short time limits and that the powers exercisable by order are similar to those[5] of the Fair Trading Act referred to in paragraph 8.22.

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[1] Fair Trading Act 1973 Parts I, IV, VIII. See especially sections 9(1), 49(3) and (4), Schedule 8, Part I, paragraph 6.

[2] Competition Act, 1980, section 2(1).

[3] 'Anti-Competitive Practices', a guide to the provisions of the Competition Act 1980, issued by the OFT.

[4] The Anti-Competitive Practices (Exclusions) Order, 1980 (SI 1980 No 979), broadly speaking, excludes from the definition of 'anti-competitive practice', *inter alia*, practices carried out by companies which have an annual turnover of less than £5 million and less than a 25 per cent share of a relevant market and which are not members of a group with either an annual turnover of £5 million or more or which have a 25 per cent share or more of a relevant market.

[5] Competition Act, 1980, section 12(6).

8.24. By adopting a flexible approach of the kind described in paragraphs 8.21–8.23 a number of problems which are described in paragraphs 8.11–8.19 would not arise or would be a good deal more manageable. Thus, if the cases taken up were not unduly numerous, the overall administrative burden would be less. Without involving a wide range of companies in the investigations or requiring extensive changes of practice, attention could be directed to particular trading situations (for example, where there were individual suppliers or customers with exceptional market power) or particular forms of the reference practice or particular types of special benefit if it were considered that special scrutiny was required. The various aspects of cost relationship or of a 'meeting competition' justification could be flexibly handled by reference to criteria of what could be regarded as reasonable in the relevant circumstances.

8.25. We recognise, however, that one of the difficulties of applying a procedure on selective lines is that it may be thought inequitable to deny recourse to the practice to one or a number of companies while their competitors, whether suppliers or customers, are left free to employ it as a competitive trading weapon. The emergence of this problem is apparent from some of the reports we have summarised in Appendices 3 and 4.[1] In some circumstances, however, findings in relation to one company may influence others but in different circumstances more than one investigation may be required or 'complex monopoly' provisions (see paragraph 8.22) may have to be considered. There may also be problems in relation to the choice of products for investigation. Different suppliers deal in different mixes of product and some may organise their discount relationship with their customers in terms of a wide range or, at least, a wider range than others (for example, granting turnover discounts or concessions related to purchases of both branded and 'own label' goods). It may be difficult to prohibit discrimination, if that course is required by the outcome of an investigation, in relation to certain goods, while leaving the supplier free to discriminate in relation to other goods not subjected to the investigation. Further, if measures of regulation are to be applied to customers, the investigation may have to embrace a wide range of the products purchased. These are matters on which experience has still to be gained.

**Restrictive Trade Practices legislation**

8.26. We now turn to the suggestion that the bargaining power of voluntary groups or trade associations might be increased if there were firm collective agreement on the part of the retailers or wholesalers to purchase all or a large proportion of their requirements exclusively through a particular dealer or group or to follow the recommendations of the group or a trade association as respects dealing or refusing to deal in a particular supplier's products from time to time. The group or the wholesaler would arguably be enabled by this means to emulate the tactics of the multiple retailers by being in a position, in the course of negotiations for better terms, to offer the manufacturer a reasonably guaranteed or, at least, reliably expected off-take, on the one hand, or, on the other, to threaten the prospect of losing sales altogether.

[1] Frozen Foodstuffs (see Appendix 3) and Cadbury-Schweppes Foods Ltd (see Appendix 4).

8.27. It would appear that agreements of this kind might fall within the scope of the Restrictive Trade Practices (RTP) Act.[1] If so, it is open to parties to such agreements to seek to justify them before the Restrictive Practices Court as consistent with the public interest. Indeed one of the relevant defences ('gateways') is that the agreement is 'reasonably necessary' to enable the parties 'to negotiate fair terms' with a 'preponderant' buyer or seller for the supply or acquisition of goods.[2] This has rarely been utilised by parties in connection with agreements of this kind, presumably because they have been unwilling to incur the costs and burdens of the procedure or doubted whether the 'gateway' would in fact be applicable to the circumstances of their case or considered their chances of success were slim. A further, and possibly more important, reason for the absence of such agreements is that many of those concerned with retailing are anxious to maintain their independence and reluctant to jeopardise their freedom of action, for example, by entering into agreements which seriously restrict their freedom of choice of supplier.

8.28. If restrictive agreements are not to be defended before the Court, they may be permitted to operate by recourse to section 21(2) of the RTP Act whereby the Secretary of State, on the representation of the Director General of Fair Trading, may exempt agreements from Court proceedings if the relevant restrictions (or information exchange provisions) 'are not of such significance as to call for investigation by the Court'. As we understand it, the Director General's ability to make such representations depends upon the 'insignificance' of the restrictions in question. We understand that this is regarded as a limited area of discretion which does not permit the Director General to make a representation about any agreement which it would be proper for the Court to examine.[3] A number of agreements necessary for the functioning of certain voluntary groups have, however, been exempted under this procedure, no doubt because their methods of operation did not comprise the acceptance of significant restrictions, but that is a matter for the Director General.

**Codes of conduct**

8.29. There were suggestions in our evidence that a non-statutory code of practice or conduct regulating the reference practice might be beneficial but there was no detailed indication of its possible content. Such a code might encounter problems of effective enforcement and, depending on its provisions, difficulties under the RTP legislation.

[1] Whether a particular agreement or arrangement is caught by the RTP Act can sometimes be a complex matter depending on its precise terms.

[2] Restrictive Trade Practices Act 1976, section 10(d).

[3] In his 1977 and 1978 Annual Report (HC 228 and 79), the Director General explained that restrictions may be significant because, for example, they limit suppliers' freedom to make their own decisions about prices or charges or incorporate a collective exclusive dealing agreement or because they affect goods or services supplied to large numbers of people. Any agreement which appears capable of causing detriments either to consumers or other traders, or is likely to reduce competition or to produce discrimination or other unfair results is said to be in principle unsuitable for a representation (pages 38 and 42 respectively).

8.30. It has also been suggested that we should recommend the Director General of Fair Trading to publish, for those sectors involved in the manufacture and sale of branded consumer goods, after consultation with the industries involved, a set of guidelines for relations between buyers and sellers to which he intended to refer when considering whether or not to investigate a possibly anti-competitive practice (for example, under the Competition Act, 1980).[1] It is argued that by this means some of the difficulties referred to in paragraph 8.29 might be avoided and the existence of the guidelines would act as a deterrent to any person who might be inclined to behave in a contrary manner. We refer to this, and other matters dealt with in this chapter, in our Conclusions.

[1] Proposal made by Food and Drink Industries Council. Also, a witness suggested that, subject to the conclusions of this report, the Director General should, with the assistance of his powers under the Competition Act, establish a framework within which terms might be developed by individual suppliers and determine subsequently whether or not particular trade terms fell within it (see Appendix 10).

CHAPTER 9

# Conclusions and Recommendations

### The practice and its prevalence

9.1. The practice of granting discriminatory discounts or benefits takes a great variety of forms. Any difference of price as between one customer and another may constitute a form of the practice. The practice may also arise if special benefits, of which we give examples in paragraphs 4.23–4.24, are accorded to one customer but not another.

9.2. Most manufacturers supplying the retail trade issue price lists of some kind. The practice may arise from the application of published scales of prices where these favour particular types of buyer but more commonly arises to a significant degree where the supplier negotiates some of his prices. We found relatively few suppliers who do not negotiate with, or grant to, some of their customers special prices or other terms, a number who do so with respect to a substantial proportion of their customers and a few who negotiate with all their customers individually.

9.3. Individually negotiated discounts and special benefits result in differences of terms and frequently give rise to the practice. Whether they do depends on whether there is any part of the differentiation of price or other terms which cannot be attributed to a difference in the supplier's costs. We have found that differences of costs are only one of the factors which most suppliers take into account in their pricing and in the according of special benefits. Competition between suppliers and the desire to increase (or secure) sales volumes are other important factors which induce suppliers to charge different customers different prices. There is a general tendency for large accounts to benefit from discrimination.

9.4. For a number of reasons, statistical measurement of the practice is not feasible. Retailing embraces a very wide range of activities, involving an enormous number of transactions and of negotiations between suppliers and their customers, and new arrangements and agreements are continually being made. Even in the grocery trade, in which our inquiries have been most extensive, we have not been able to deal with the subject exhaustively. Moreover, we found relatively few suppliers to the retail trade who make frequent or detailed estimates of the differences in their costs of supplying different customers. In order to assess the prevalence and degree of the practice, we have therefore had to form a broad impression of its general extent and effect. To do this, we have made inquiry of many manufacturers, wholesalers and retailers and their associations. We have also drawn on past reports of this Commission and of the Price Commission and on other published material.

9.5. Of the products about which we made detailed inquiry (see paragraphs 5.26–5.27), discrimination appeared to be greatest in the supply of bread and paint and of little significance in the supply of cigarettes. There was discrimination to a varying extent in the supply by manufacturers of baked beans, paper handkerchiefs, canned beer, dentifrice, ladies' fine-gauge hosiery, biscuits and refrigerators. Earlier reports of this Commission also indicated the existence of the practice, to a varying degree, in the supply by manufacturers of primary batteries, frozen foodstuffs, cat and dog foods, ice cream, and domestic gas appliances and in the supply by wholesalers of petrol (see Appendix 3). Reports of the Price Commission have indicated the existence of the practice in respect of such products as manufactured foods, beds, floor and furniture polish, and children's toys and games (see Appendix 4). In addition to these detailed studies, we received generalised accounts of the wide extent of the practice from individual manufacturers and from wholesalers and retailers and bodies representing them. We conclude that over a wide range of products supplied by manufacturers in the grocery trade the extent of the practice both in prevalence and in degree is considerable. Discrimination also occurs, but only to a limited extent, in dealings between grocery wholesalers in the delivered trade and their customers. We also conclude that the practice is widespread outside the grocery field.

9.6. We emphasise that the scene is continually changing. Not only does the extent of discrimination differ from product to product but it also tends to fluctuate for particular products according to the balance between demand and supply or production capacity, and it is influenced by the general state of the economy. Petrol is a good example of such a product. Changes in supplying industries and in the retail trade affect trading relationships and the extent of the reference practice. As there is no sign of any slackening in the speed of change and there is uncertainty about the direction of future change, conclusions about the nature, extent and effects of the reference practice as it operates at present cannot be regarded as necessarily applying in the future.

**The Public Interest**

9.7. We now consider the general effect of the practice in relation to suppliers, retailers and consumers.

*Suppliers*

9.8. We have observed that discrimination in suppliers' dealings with retailer customers is most likely to be greatest when much of the market for the product in question is in the hands of a fairly small number of suppliers and some of their customers have significantly more bargaining power than others. These conditions applied to most of the products which we investigated in the course of the present inquiry.

9.9. Where a supplier has substantial market power he may be able to discriminate between different retailer customers to an extent which may restrict competition among suppliers by impeding new entry and in other ways. However, while discrimination may be initiated by a powerful supplier for the purpose of exploiting or maintaining his position in the market, it may, alternatively, be a response to the strength of powerful buyers. We have found in this inquiry that the latter situation has been the more common. The resulting growth of the practice referred to us does not generally restrict competition among suppliers to retailers. The practice more frequently constitutes the form which effective competition among suppliers takes.

9.10. The reference practice, to the extent that it has been buyer-induced, tends to put pressure on manufacturers' prices (see paragraph 6.18) and therefore on their profits. It is impossible to disentangle the effects of the practice from those of other factors such as sluggish demand, over-capacity or import competition. These factors in turn affect the extent and degree of the practice. However, insofar as manufacturers' average prices are lower as a result of the practice than they otherwise would have been (see paragraph 6.19), some loss of profit will have occurred unless the lower average prices have been matched by economies or other cost reductions. In general, we consider that the reference practice, where it has been a feature of enhanced competition among manufacturers, has tended to improve efficiency and induce economies.

9.11. As we have pointed out, a large part of the domestically produced supply of many products sold by retailers in grocery and many other trades is in the hands of a small number of manufacturers. There is a general tendency for the degree of concentration among United Kingdom manufacturers to increase. The reference practice may play some part in this but a much more important part is played by the growing importance attached by companies to expected economies of scale in production, transport and marketing, and other factors. We believe that pressures towards concentration would continue even in the absence of the reference practice. Moreover, it should not be overlooked that powerful buyers in the retail trade have the resources to seek out and develop new sources of supply if they are required, sometimes from overseas.

9.12. We consider that the reference practice has encouraged concentration among wholesalers. This concentration has arisen from their role as buyers rather than as sellers and has also reflected the declining demand for wholesalers' services from the independent retail sector. While a possible threat to competition arises from this, we consider that it has so far helped to redress the balance between large retailers and the small retailers whom the wholesalers supply.

*Retailers*

9.13. Many independent retailers who believe that they are adversely affected by discrimination feel that it puts them at an unfair disadvantage in competition with multiple and other large retailers. They therefore argue that it should be regulated or outlawed so as to ensure that competition takes place on a fair basis, that is on the basis that differences in price reflect differences in cost. This raises difficulties not only of calculating costs but also of excluding other factors which suppliers may wish to take into account in their relations with customers. We have found it a more fruitful approach for the assessment of the public interest to consider the consequences of the practice, now and in the future, for competition within retailing.

9.14. In this connection, an important effect of the reference practice on the distributive trades has been to favour large organisations. Two aspects of this raise questions for the public interest.

9.15. First, it may be the case that the reference practice distorts competition among retailers. Effective competition would be expected to eliminate those retailers who use resources less efficiently than others. The less efficient would incur costs of operation higher than those of their rivals. This would require them either to raise their prices, and thereby lose their share of the market, or to enjoy lower profit margins so that, at the least, they could not easily raise capital to expand. In the long run, either outcome might be expected to force their exclusion from the market. However, it might be that a large retailer could operate his business inefficiently, incurring high resource costs thereby, but be able to extract discounts or other benefits from his suppliers sufficient to offset his inefficiencies and thereby to survive the competitive struggle for market shares. The large retailer, because he is a large buyer, might then be said to extract from his suppliers what is in effect a subsidy of his inefficiency. Not only might he thereby survive, if the 'subsidy' is large enough, he might be able even to expel other retailers who were more efficient in their use of resources but who were too small as buyers to get such preferential terms from their suppliers. Competition might then be said to be distorted to the extent that not the fittest, but the fattest, survive.

9.16. We do not detect any indication that this is happening at present. We think that in general the large multiple retailers who have emerged so strongly in recent years have successfully exploited new techniques in retailing and represent an efficient response to changing market conditions. Also, the practice appears to have had some favourable effect on efficiency in retailing and wholesaling in that it has tended to break down traditional margins, to stimulate the search for reductions in cost and improvements in service and to encourage more competitive behaviour. It would in fact be a matter of some difficulty to identify a point at which the growth of a large multiple, partly by reason of the practice, had become excessive. What is important is to see whether competition among retailers, in particular among large retailers, continues to be vigorous and whether they continue to respond promptly and efficiently to changing market requirements. This brings us to the second aspect of the growth of large organisations to which we refer in paragraph 9.14.

9.17. The fact that no clear sign has yet appeared that the rate of growth in the market share of the largest multiple chains has begun to slacken suggests that retailing might come to be dominated by a few very large retailers to such an extent that competition would suffer and the consumer would be worse served than at present. The tendency of multiple retailers and independent retailers to serve distinct markets (see paragraph 7.20) and the competitive advantages of size, both in part a consequence of the reference practice, make it more difficult than it has been in the past for an independent retailer or even a small multiple chain to grow large enough to challenge the leading established multiple retailers on their own ground.

9.18. So far, we see no evidence of any diminution in the degree of competition between large multiple chains. It is possible that concentration might even proceed further without such diminution. Moreover the retail Co-operative societies, influenced to some extent by social as well as commercial considerations should continue to provide an additional source of competition within retailing, whatever developments occur in the multiple sector. The continuing existence of independent retailers, in spite of the tendency for distinct markets to emerge, is also a source of competition. Experience hitherto suggests that new entry, even into large scale retailing, has been a continuing feature of the retail trade and that even large retail organisations may succumb to competitive pressures. We are not convinced that this process has come to an end, even though the reference practice may tend to impede it. We therefore do not consider that the development described in paragraph 9.17 has taken place or is occurring now. However, many sectors of retailing are still in process of rapid change and the future shape of retailing cannot clearly be discerned. There can be no certainty that the dangers to which we refer in paragraph 9.17 are unreal.

*Consumers*

9.19. Where the practice occurs, those retailer buyers who obtain lower prices or better terms than other customers as a result of discrimination enjoy a positive benefit. For the reasons we give in paragraph 6.19, there are restraints on the ability of manufacturers to raise prices even to their least favoured buyers by reason of the lower prices conceded to buyers with greater bargaining power. On average, prices to retailers have in our judgement been generally lower than they would have been in the absence of the practice. As competition between retailers has been keen and vigorous, the benefits of these lower buying prices have been substantially passed on to customers in the form of prices which are lower than they would otherwise have been and possibly through improved service. Although the practice may in certain circumstances result in manufacturers' prices to some retailer buyers being higher than they would otherwise have been (see paragraph 6.18), competition among retailers reduces the extent to which this results in consumers paying higher prices. It is our view that, in general, retail prices are lower than they would have been in the absence of the practice.

9.20. It is sometimes argued that a long-term effect of the practice might be seriously to diminish the variety and quality of goods available to the consuming public. We have seen no evidence that this is occurring. Rather it appears to us that large and powerful retail buyers obtain, whether from this country or abroad, products of the quality and variety necessary to attract custom in competition with other retailers. Provided that competition among manufacturers and among retailers remains keen and vigorous we do not expect the reference practice to lead to a reduction in the variety and quality of goods which are offered for sale.

9.21. There has been a substantial reduction in the total number of retail shops over the last 30 years (see paragraph 7.2). This loss, particularly where all shops, or all shops in a particular trade, have disappeared from a locality, has disadvantageous consequences especially for those consumers whose mobility because of age, disability, poverty or other reasons is restricted. We consider, however, that the contribution of the reference practice to this loss has been small and that other factors have been more important (see paragraphs 7.22–7.23). Even in the absence of the practice, social problems of the kind which have given rise to concern (see paragraph 7.27) would, in our view, persist.

**General conclusions**

9.22. Consumers' interests are best safeguarded and promoted where competition flourishes. We have found that the practice has not in general had an adverse effect on competition among suppliers to the retail trade. On the contrary, it has been widely associated with enhanced price competition among manufacturers. At the same time, the generally vigorous competition among retailers has so far ensured that the benefits of this competition have in the main been passed on to the consumer in one form or another.

9.23. We conclude that the general effect of the practice on the public interest over recent years has not been harmful. Rather the practice has been part and parcel of developments which have been beneficial to competition and to the consumer. For the future, however, we emphasise that this conclusion holds good only so long as there continues to be effective competition among suppliers and among retailers. We draw attention to the danger that the practice might encourage concentration in retailing to such an extent as to have harmful consequences.

## Recommendations

9.24. Since we have reached the conclusion that neither the reference practice, nor any particular form it may take, generally or invariably operates against the public interest, we do not think that an overall measure of prohibition or regulation is necessary or desirable. Nor do we consider a less far-reaching measure, such as making the publication of all discounts and terms obligatory, to be warranted. Even if we had not reached these conclusions, we should have had to give weight, before making any recommendations as to remedies, to the adverse effects on competition and prices of an overall measure and the practical problems involved in applying it to which we have referred in Chapter 8.

9.25. However, as is evident from Appendices 3 and 4, both this Commission and the Price Commission have found a number of particular instances in which the operation of the practice gave rise to objection. We recognise that in some circumstances the practice might, in association with other factors, operate against the public interest. A procedure is accordingly necessary for investigating such cases, whether of suppliers adopting the practice or customers inducing or benefiting from the practice, or both.

9.26. The question that would have to be investigated in these instances is whether the practice in the particular circumstances is having a significantly damaging impact on the public interest. This can be a complex matter to judge. Other factors as well as the practice may contribute to the observed effects; the practice may stimulate as much as stifle competition or function as its instrument; to try to remove it may make trading conditions less rather than more competitive. What is needed is a flexible system of inquiry in which all these and any other relevant considerations can be taken into consideration.

9.27. We do not think that the mere existence of the practice would in itself afford sufficient ground for investigation. Nor do we attempt to set out a full list of criteria since whether the practice appears to be having an adverse effect on competition depends on the circumstances of the particular case. Significant questions are whether the parties, as suppliers or customers, possess exceptional market power; whether the practice takes a form which in the circumstances acts as a barrier to entry or is predatory; whether the benefits of lower prices resulting from the practice are not being passed on to the consumer; whether the practice is combined with other practices liable to impair competition, for example some form of exclusive dealing; whether the viability of efficient suppliers or retailers is seriously threatened by the practice to the detriment of consumers; whether the price differentiation is exceptionally great.

9.28. Powers to investigate such cases already exist under the Fair Trading Act 1973 and they have recently been extended by the Competition Act 1980. We observe that they include the power to prohibit a named person from engaging in a specified anti-competitive practice or one similar in form and effect.[1] They also include powers to make it unlawful for such a person to engage in price discrimination or to do anything which amounts to this, to require the publication of a list of prices and to make it unlawful to charge prices different from those published.[2] We assume that these provisions will enable particular instances of the practice (including, for example, discriminatory terms for drop-shipment or other types of special benefit) to be subjected to regulation if it appears that competition is being substantially damaged thereby and some remedy is required.

9.29. Until further experience of the working of the Competition Act is available its effectiveness in this context will be difficult to assess. However, if it emerges in due course after a number of inquiries that there are instances which manifestly need to be controlled but cannot be dealt with under the existing powers, it will become necessary to consider whether new legislation is required to extend them.

9.30. In the course of investigations into the practice or the enforcement of any decision requiring its ending or modification, the question will doubtless arise of the relationship between any price differentiation and cost saving. To work this out in any particular case is not impossible but may be costly and there is scope for argument over the validity of the methods employed. We think that companies should be permitted to make their case in terms of realistic estimates based on reasonable business practice.

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[1] Competition Act 1980 section 10.

[2] Competition Act 1980 section 10 and Fair Trading Act 1973 section 56 and Schedule 8.

9.31. Similarly, we think it important to give due consideration to arguments that the practice may need to be employed to enable companies to meet competition, whether from domestic sources or imports.

9.32. Some witnesses referred to the possibility of establishing a voluntary code of conduct concerning aspects of the reference practice, as a means of regulating the pressure for or the granting of various types of special benefit or even of discriminatory discounts as such. We were not given any detailed indication of a code commanding widespread agreement. There is always the risk that self-regulation by trade associations could reflect or encourage a reduced level of competition between suppliers or customers and codes attempting to restrict pricing or discount practices might involve the participants in registrable agreements of significance under the Restrictive Trade Practices (RTP) legislation. A code relating to special benefits of peripheral importance may be able to avoid this obstacle but would have correspondingly less impact and is essentially a matter for the interests concerned and the OFT. It was also suggested that the Director General should issue, under the Competition Act, guidelines for relations between buyers and sellers (see paragraph 8.30 and Appendix 10). The desirability and propriety of taking such action are matters for the Director General.

9.33. Another matter for consideration is the effect of the RTP legislation on co-ordinated action to strengthen the bargaining power of small firms. We fear that any general exemption with this object, even if it were practicable, would open the way to schemes liable to reduce competition. The growth of voluntary groups has strengthened the buying power and assisted the selling efforts of independent retailers, thus promoting competition. Further development of the existing groups or the formation of new groups is primarily a matter for the independent retailers or for wholesalers themselves. In the light of the evidence we have been given, there seems no reason to conclude that the RTP legislation as at present administered acts as an impediment to such degree of cohesion in their operations as members of voluntary groups have been themselves voluntarily prepared to accept, given the powers of the Secretary of State on the representation of the Director General not to refer to the Court provisions which are not of such significance as to call for investigation by the Court.[1] If, in the light of future developments, agreed voluntary group schemes emerge with a more pronounced emphasis on the co-ordination of members' buying power which cannot be dealt with in this manner, attention might be given to the possibility of exemption from the scope of the RTP legislation when the amendment[2] of that legislation comes to be considered. However, we recognise that any amendment which would provide such exemption without having other and undesirable consequences would be very difficult to devise. The essential test is whether on balance competition would be enhanced rather than diminished. It should not be overlooked that some wholesalers concerned with voluntary group activities have themselves become, as we have pointed out (see paragraph 7.15), very large organisations

[1] Restrictive Trade Practices Act 1976 section 21(2)

[2] We note that wholesale co-operative societies have been granted an exemption from certain provisions of the legislation (Restrictive Trade Practices Act 1976 section 32).

and it is not necessarily obvious that it would, in principle, be in the interests of their customers to relieve the former outright from the restraints on restrictive trading agreements applicable generally. The wholesalers have not in fact requested such a measure.

9.34. Finally, we have drawn attention to the fact that the reference practice tends to increase concentration in the distributive trades. We have referred to the fears which have been expressed that a handful of large multiples, buying on more favourable terms than their actual or potential competitors, might come to dominate the distributive trades to the disadvantage of suppliers and consumers (see paragraphs 8.4 and 9.17). We consider that the advent of this state of affairs might be both hastened and made more probable, regionally or nationally, by continued acquisitions by the leading multiples of their smaller competitors. We consider that it is important to keep a particularly close watch on future mergers in the distributive trades.

9.35. However, the Secretary of State may refer mergers to this Commission only if the combined market share of the parties exceeds 25 per cent or the value of the assets taken over exceeds £15 million.[1] Distributive organisations may possess substantial buying power with market shares much below 25 per cent and, in the particular circumstances of the retail trade, acquisitions of other retailers who have less than £15 million assets may have a significant effect on competition. It is highly desirable that it should be possible to refer to this Commission for closer scrutiny any mergers which appear likely to reduce materially the extent of competition in retailing on a national or regional scale. If it should appear that the existing criteria are too limited to allow the reference of such mergers, we hope that consideration would be given to suitable modification of the criteria. As we have emphasised throughout the report, vigorous competition in the distributive trades and among their suppliers is the surest protection of the public interest.

J G Le Quesne *(Chairman)*

J D Eccles

R L Marshall

C M Miles

R G Opie

J Gill *(Secretary)*

17 February 1981

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[1] Fair Trading Act 1973 section 64 and SI 1980/373.

APPENDIX 1

(*referred to in paragraphs 3.6, 3.10, 3.11, 6.8, 7.1 and 7.3*)

# Developments in the distributive trades

## Introduction

1. This appendix outlines and illustrates from the latest published statistics the principal changes that have occurred in the distributive trades over the past quarter of a century.

## Consumer expenditure

2. Movements in the volume of total consumers' expenditure compared with those of retail sales and consumers' expenditure on food since 1956 are shown in Chart I. Expenditure on food grew much more slowly than other components of expenditure over the whole period, and increased very little in the 1970s. Changes in the shares of consumers' expenditure at current prices accounted for by some of its principal components are illustrated in Table 1. There was a sharp decline in the share accounted for by food, and significant increases in the importance of expenditure on housing, cars and other goods and services.

## Structure of retailing

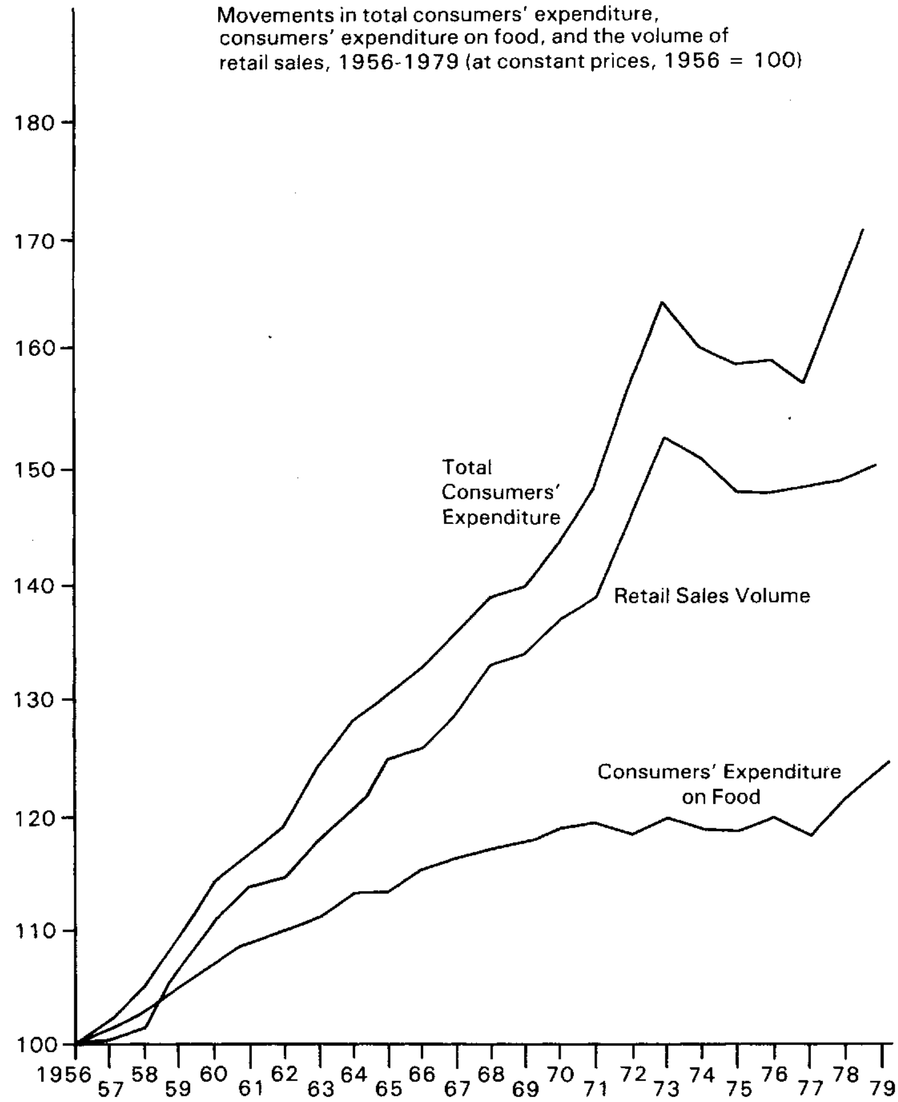
3. Table 2 summarises some of the main structural changes observed in retailing over the period 1950–78, namely: a large increase in the volume of retail sales (though, as Chart I shows, this was checked in 1973); a large decrease in the number of retail shops, the greater part occurring after 1971; and, after 1971, a relatively small decline in the numbers of persons engaged in retailing.

4. Succeeding tables show some of these changes in greater detail.[1] Table 3 shows that, for retailing as a whole, Co-operative societies suffered the greatest decline in the number of retail outlets, followed by independents. The number of outlets owned by multiple retail organisations remained fairly steady between 1961 and 1977. There was a variety of experience between trades, especially large reductions in outlet numbers being experienced by grocers, butchers, chemists, booksellers and cycle shops, while the broad category of household goods shops remained fairly stable and accounted for 16 per cent of all retail outlets in 1978, compared with 10 per cent in 1950.

5. Table 4 illustrates the growth in the volumes of retail turnover passing through four principal categories of shop over the period 1955–79. Of these, food shops experienced by far the slowest growth in turnover volume over the period, while shops selling durable household goods experienced by far the fastest growth.

[1] In interpreting these figures account has to be taken of difficulties arising from the blurring of traditional boundaries between trades and changes in classification (see notes to Table 3).

CHART I




*Source: Economic Trends*

TABLE 1 **Percentage shares of components of consumers' expenditure (current prices)**

| | *Food* | *Alcoholic drink and tobacco* | *Housing, fuel and light* | *Clothing (incl footwear)* | *Durable household goods* | *Cars and motor cycles* | *Other goods* | *Other services* | *Total* |
|---|---|---|---|---|---|---|---|---|---|
| 1950 | 29 | 16 | 13 | 11 | 5 | 1 | 11 | 14 | 100 |
| 1961 | 25 | 13 | 14 | 10 | 5 | 3 | 13 | 18 | 100 |
| 1971 | 20 | 12 | 18 | 9 | 5 | 4 | 15 | 18 | 100 |
| 1979 | 18 | 12 | 19 | 7 | 5 | 4 | 16 | 18 | 100 |

*Source: Economic Trends*

TABLE 2 **Major changes in the structure of retailing in Great Britain 1950–78**

| | *1950* | *1961* | *1971* | *1978* |
|---|---|---|---|---|
| Volume of retail turnover | 100 | 140 | 171 | 184 |
| Numbers of shops | 100 | 93 | 81 | 61 |
| Numbers of persons engaged | 100 | 106 | 107 | 92 |

*Sources*: *Economic Trends*, Censuses of Distribution and Retailing Inquiries.

6. Table 5 sets out the shares of turnover accounted for in the various shop sectors by multiples, Co-operatives and independents respectively. While the growth in the multiples' market share has been an outstanding characteristic of the changes in the structure of retailing in recent years, this table indicates how experience has varied among sectors (though for many trades no official statistical information is available later than 1971). Sectors in which the multiples' share increased rapidly include grocers, off-licences, women's wear and general clothing shops, and chemists. Relatively little increase in share, however, was obtained by the multiples among butchers, confectioners and footwear shops (though multiples already had a substantial share of the latter).

7. While Table 5 divides the total sales made by all shops classified to a particular trade category according to differences in the type of ownership, interpretation of this information is complicated by the fact that there has been an increasing trend towards diversification, with an increasing proportion of goods in many categories (for example, confectionery, hardware) being sold through outlets whose main business is in a different category (for example, groceries). Table 6 complements Table 5 by using official statistics to classify the sales of different classes of product for a number of years between multiples, Co-operatives and independents. The trends observed in Table 5 are clearly reflected in Table 6 also.

8. *Mail order* This sector covers both catalogue mail order and direct response specialists promoting a limited range of goods via the press and other media. The former category of business accounts for by far the greater share of the total, and is dominated by six mail order houses, with the two largest accounting for 40 per cent of the total trade of these businesses. Mail order has been expanding very rapidly in recent years, the volume of such sales increasing by 66 per cent between 1971 and 1979 as against 21 per cent for sales in non-food shops.

9. *Department stores* This form of retailing operation is estimated to account for 6 per cent of retail trade in 1976, almost unchanged from its 5·9 per cent share in 1961—though the share fluctuated somewhat between those dates. A major development of recent years has been the growth (partly through merger) of department store chains.

**Developments in grocery distribution**

10. (i) *Number and size of shops*

Changes in the numbers of grocers' shops between 1961 and 1979 are detailed in Table 7. The total number of such shops in the United Kingdom fell from 147,000 in 1961 to 105,000 in 1971 and to 69,000 in 1979. The number of grocers' shops owned by multiple retailers and by Co-operatives fell by over 60 per cent between 1961 and 1979, proportionately a greater fall than that experienced by the independents. Table 8 shows the great increase in the average size expressed in terms of sales volume of grocery retail outlets as a whole, distinguishing between those operated by multiples, independents and Co-operatives. While Co-operatives and independent outlets in the grocery sector have grown in line with those in retailing as a whole, multiple grocery outlets have grown very much faster. This reflects the nature of developments in multiple grocers' methods of operation. In recent years there has been a striking growth in the number of superstores and hypermarkets from an estimated 12 in 1969 to an estimated 250 in 1980. According to a survey by IGD, the average selling space of store opened rose from around 6,500 square feet in 1969 to 9,400 in 1974–75 and 13,000 in 1976. The multiples tended to open the largest shops. Thus, the average size of store opened by multiples in 1974–75 was 11,232 square feet, compared with 4,507 square feet for Co-operatives; and, in 1976–77, 16,027 as against 7,900. To a large extent the multiples' shop closures represented rationalisation—a replacement of a large number of small shops by fewer, larger, shops. While, as Table 7 shows, the number of multiple grocers' shops fell by 5,000 between 1971 and 1979, the selling area of multiple grocers' shops increased substantially over the same period, from 21·9 to 27·6 million square feet (IGD). Table 9 shows numbers of supermarkets by type of organisation.

(ii) *Self-service*

In 1950 there were 600 self-service outlets, of which 90 per cent were Co-operatives. By 1979, about 95 per cent of grocery stores of all kinds were operated on self-service lines.

(iii) *Diversification*

Table 10 indicates that the proportion of non-food sales in the larger grocery-based stores is greater than in smaller stores.[1] The development of superstores and hypermarkets has taken diversification of grocery-based stores much further than before, with food often accounting for less than half of sales. Non-grocery items include alcoholic drinks, toiletries, hardware, stationery, toys, garden tools, decorating supplies, car accessories, clothing and soft furnishings.

[1] This is recognised in the 1976 retail inquiry, which introduced a new category of business called 'mixed retail business', accounting for 27 per cent of total business in 1978.

TABLE 3 **Changes in numbers of shops, by trade**[1]

| | 1950 | 1961 | 1971 | 1978 | Annual percentage rate of change 1950–61 | 1961–71 | 1971–78 |
|---|---|---|---|---|---|---|---|
| *Total Retail Trade* | 583,132(100) | 542,301(100) | 472,991(100) | 350,038(100) | −0·6 | −1·3 | −3·3 |
| Multiples (% in brackets) | 53,949(9·3) | 66,701(12·3) | 66,785(14·1) | 63,876†(18·8) | 2·0 | 0 | −0·6 |
| Co-operative Societies ,, | 25,544(4·4) | 29,396(5·4) | 15,413(3·3) | 10,207(2·9) | 1·3 | −6·3 | −5·7 |
| Independents ,, | 563,639(86·3) | 446,204(82·3) | 390,793(82·6) | 275,955(78·3) | −1·1 | −1·3 | −4·8 |
| *Grocery and Provision Dealers** | 145,709 | 146,777 | 105,283 | 52,289 | 0·1 | −3·3 | −7·6 |
| *Other food retailers:* | 137,867 | 114,655 | 92,524 | 67,908 | −1·7 | −2·1 | −4·3 |
| Butchers | 41,799 | 42,419 | 33,939 | 21,422 | 0·1 | −2·2 | −7·9 |
| Greengrocers, fruiterers | 43,948 | 33,073 | 23,318 | 14,799 | −2·6 | −3·4 | −6·2 |
| Fishmongers, poulterers | 9,511 | 6,330 | 4,678 | 2,999 | −3·6 | −3·0 | −6·1 |
| Bread & flour confectioners | 24,181 | 17,260 | 17,299 | 12,914 | −3·0 | 0 | −4·1 |
| Off-licences | 8,197 | 9,000 | 9,437 | 9,015 | 0·9 | 0·5 | −0·6 |
| Dairymen | 10,231 | 6,573 | 3,853 | 6,759 | −3·9 | −5·2 | 7·3 |
| *CTNs*[2] | 74,606 | 70,108 | 52,064 | 49,491 | −0·6 | −2·9 | −0·7 |
| *Clothing and footwear shops* | 97,162 | 86,555 | 81,279 | 60,263 | −1·1 | −0·6 | −4·2 |
| Footwear | 14,870 | 14,104 | 13,445 | 10,961 | −0·5 | −0·5 | −2·9 |
| Mens & boys wear | 15,581 | 13,577 | 14,619 | 10,698 | −1·2 | 0·7 | −4·3 |
| Womens, girls and infants wear[3] | 66,711 | 58,874 | 53,215 | 38,604 | −1·1 | −1·0 | −4·5 |
| *Household goods shops* | 56,930 | 60,343 | 70,342 | 56,358 | 0·5 | 1·6 | −3·1 |
| Furniture | 18,953 | 16,498 | 22,131 | 18,458 | −1·3 | 3·0 | −2·6 |
| Radio & electrical goods | 11,761 | 16,517 | 17,942 | 13,725 | 3·1 | 0·8 | −3·8 |
| Radio and TV rentals | 168 | 2,225 | 3,808 | 4,552 | 26·5 | 5·5 | 2·6 |
| Hardware, china, wallpaper, paint | 26,048 | 25,103 | 26,461 | 19,623 | −0·3 | 0·5 | −4·2 |
| *Other non-food retailers* | 69,217 | 60,113 | 66,724 | 45,363 | −1·3 | 1·1 | −5·4 |
| Booksellers, stationers | 10,388 | 5,967 | 6,001 | 4,556 | −4·9 | 0·1 | −3·9 |
| Chemists, photographic dealers | 18,205 | 18,097 | 16,670 | 12,811 | −0·1 | −0·8 | −3·7 |
| Cycle and perambulator shops | 8,865 | 5,630 | 2,793 | 1,619 | −4·0 | −6·8 | −7·5 |
| Jewellery, leather & sports goods shops | 18,896 | 17,506 | 21,786 | { 26,377 | −0·7 | 2·2 | { −6·2 |
| Other non-food shops | 12.863 | 12,913 | 19,474 | | — | 4·2 | |

*Table 3 (continued)*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *General Stores* | | | | | | | |
| Department stores | 529 | 784 | 818 | N/A | 3·6 | 0·4 | N/A |
| Variety and general household stores | 1,112 | 2,966 | 3,957 | N/A | 7·8 | 2·5 | N/A |
| Mixed retail business[4] (including general mail order houses) | N/A | N/A | N/A | 18,367 | N/A | N/A | N/A |

*Sources:* Censuses of Distribution and (after 1971) annual retailing inquiries.

*Notes:*

[1] The last Census of Distribution took place in 1971, being replaced by annual retailing inquiries, commencing in 1976. Up to 1971 shops and organisations were classified separately according to their principal kind of business. However, after 1971 only organisations were so classified. Thus, for instance, from 1976 onwards, in statistics based on the retailing inquiry, a butcher's shop owned by a primarily grocery-based organisation is classified as a grocer's shop (and vice versa). The BSO has carried out a special investigation, based on 1971 Census information, into the effect of this change on statistics relating to shops classified by trade. The results are reported in Appendix H to Business Monitor SDA 25 ('Retailing 1976'). They show that, in the aggregate, for nearly all kinds of business, the difference made by the revised system of classification would have had, in 1971 a very small effect (mostly one per cent or less) on reported statistics. Principal exceptions are radio and television hire shops, for which the revised method exaggerated the number of shops and turnover classified to such business by about 10 per cent, and department stores and variety and general household stores, where the discrepancies were much greater but which are no longer identified in the annual retailing inquiries. This change between the Census of Distribution and subsequent annual retailing inquiries, together with others of less significance, means that in statistical series based on these sources, pre- and post-1971 figures are only roughly comparable.

[2] Confectioners, tobacconists, newsagents.

[3] Also drapery and general clothing.

[4] Businesses with £150,000–£1 million turnover, of which at least 15 per cent occurs in each of three specified non-food commodity groups; and businesses with turnover of £1 million or more with less than 80 per cent of turnover falling into a specialist commodity group.

* Grocers and general food retailers. These figures overstate change in the number of grocers' shops after 1971 because the change in the method of classification since then has meant that many such shops will have been included under different headings especially 'mixed retail business'. To trace the numbers of grocers' shops after 1971, therefore, Table 7 is preferable.

† The 1978 Retailing Inquiry distinguishes Co-operatives. However, its data for large and small retailers, from which our 1978 figures for multiples and independents have been taken, do not indicate how Co-operatives are divided between these categories. We have assumed for purposes of this table that all Co-operatives were in the large multiple retailing category and therefore deducted the total for Co-operatives from the figure given in the inquiry for large multiple retailers. To the extent that some Co-operatives are so small as to fall into the independent category the 1978 figures for shops belonging to multiples in total retail trade will be under-estimated, and that for independents over-estimated.

TABLE 4 **Changes in volume of retail sales through various categories of outlet (1971 = 100)**

| | *Total* | *Food Shops* | *Clothing & Footwear Shops* | *Durable Goods Shops* | *Other Non-Food Shops* |
|---|---|---|---|---|---|
| 1955 | 70·2 | 81·0 | 65 | 47 | 67 |
| 1960 | 79·8 | 89·2 | 76 | 61 | 76 |
| 1965 | 89·4 | 94·3 | 88 | 81 | 87 |
| 1970 | 98·4 | 101·1 | 97 | 91 | 98 |
| 1975 | 106·7 | 100·0 | 106 | 119 | 111 |
| 1979 | 112·3 | 100·6 | 118 | 137 | 116 |

*Source: Economic Trends*

TABLE 5 **Percentage shares of retail turnover accounted for by Multiples (M), Co-operative Societies (C) and Independents (I) in different kinds of shop**

| *Kinds of Business* | | *1950* | *1961* | *1971* | *1979* |
|---|---|---|---|---|---|
| *Total Retail Shops* | M | 21·9 | 29·2 | 39·0 | 41·1* |
| | C | 11·4 | 10·9 | 7·1 | 6·4 |
| | I | 66·7 | 59·9 | 53·9 | 52·5 |
| *Grocers and provision dealers* | M | 20·0 | 26·9 | 44·3 | 53·6 |
| | C | 23·2 | 20·8 | 13·2 | 15·0† |
| | I | 56·8 | 52·3 | 42·5 | 31·4 |
| *Other food retailers* | M | 16·4 | 23·1 | 29·6 | 32·2 |
| | C | 14·8 | 14·0 | 9·8 | 9·0 |
| | I | 68·8 | 62·9 | 60·6 | 58·8 |
| Butchers | M | 14·1 | 14·2 | 17·0 | 16·5 |
| | C | 14·7 | 10·9 | 5·5 | 6·9 |
| | I | 71·2 | 75·0 | 77·6 | 76·6 |
| Greengrocers, fruiterers | M | 5·0 | 7·0 | 9·2 | N/A |
| | C | 5·6 | 5·0 | 1·5 | |
| | I | 89·4 | 88·0 | 89·3 | |
| Fishmongers, poulterers | M | 14·5 | 19·3 | 4·3 | N/A |
| | C | 2·2 | 1·7 | 1·0 | |
| | I | 83·3 | 79·0 | 94·7 | |
| Bread and flour confectioners | M | 15·7 | 31·2 | 38·8 | 34·6‡ |
| | C | 16·1 | 16·5 | 3·9 | N/A |
| | I | 68·2 | 52·3 | 57·3 | 65·4 |
| Off-licences | M | 31·2 | 51·8 | 57·9 | 69·1 |
| | C | 0·1 | 0·9 | 2·9 | N/A |
| | I | 68·7 | 47·3 | 39·2 | 30·9 |
| Dairymen | M | 26·9 | 36·1 | 43·9 | N/A |
| | C | 33·0 | 32·4 | 31·5 | 29·2 |
| | I | 40·1 | 31·5 | 24·5 | N/A |
| *Confectioners, tobacconists, newsagents* | M | 11·2 | 12·0 | 15·5 | 19·5 |
| | C | 0·6 | 0·7 | 0·3 | N/A |
| | I | 88·2 | 87·3 | 84·2 | 80·5 |
| *Clothing and footwear shops* | M | 32·0 | 46·0 | 55·4 | 65·0 |
| | C | 6·0 | 4·3 | 1·7 | 3·0 |
| | I | 62·0 | 49·7 | 42·9 | 31·8 |
| Footwear shops | M | 55·7 | 46·0 | 66·3 | 65·2 |
| | C | 6·8 | 4·3 | 2·2 | 3·0 |
| | I | 37·5 | 49·7 | 31·5 | 31·8 |
| Mens' and boys' wear shops | M | 37·6 | 50·9 | 49·7 | 51·8 |
| | C | 4·8 | 3·5 | 1·4 | 3·9 |
| | I | 57·6 | 45·7 | 48·9 | 44·3 |
| Womens', girls' and infants' wear; drapery and general clothing shops | M | 24·6 | 39·8 | 54·7 | 66·8 |
| | C | 6·2 | 4·4 | 1·6 | 2·8 |
| | I | 69·2 | 55·8 | 43·6 | 30·4 |
| *Household goods shops* | M | 17·4 | 24·4 | 32·2 | 45·7† |
| | C | 3·9 | 3·4 | 1·5 | |
| | I | 78·7 | 72·2 | 66·3 | 54·3 |
| Furniture shops | M | 21·6 | 22·1 | 27·1 | 31·8 |
| | C | 6·0 | 5·0 | 2·2 | N/A |
| | I | 72·4 | 73·0 | 70·7 | 68·2 |

*(continued on next page)*

TABLE 5—*continued*

| *Kinds of Business* | | *1950* | *1961* | *1971* | *1979* |
|---|---|---|---|---|---|
| *Other non-food retailers* | M | 22·8 | 24·6 | 27·7 | N/A |
| | C | 2·8 | 3·1 | 1·6 | |
| | I | 74·4 | 72·3 | 70·7 | |
| Chemists, photographic goods shops | M | 32·7 | 36·3 | 42·0 | 63·1 |
| | C | 5·8 | 5·9 | 3·0 | |
| | I | 61·5 | 57·8 | 55·0 | 36·9 |
| *General stores* | M | 34·9 | 44·8 | 54·7 | N/A |
| | C | 11·4 | 12·0 | 12·9 | |
| | I | 53·7 | 43·2 | 32·4 | |
| Variety and general household stores | M | 92·2 | 83·2 | 79·7 | N/A |
| | C | 0·5 | 6·0 | 7·0 | |
| | I | 7·3 | 10·8 | 13·3 | |
| Department stores | M | 11·1 | 17·7 | 38·0 | N/A |
| | C | 16·0 | 16·2 | 16·8 | |
| | I | 72·9 | 66·1 | 45·2 | |
| Mixed retail business stores¶ | M | | N/A | N/A | |
| | C | | | | 77·7* |
| | I | | | | 22·3 |

*Sources:* Pre-1971 data from Censuses of Distribution 1961 and 1971; Data for 1979 from Business Monitors. The information relating to Mixed retail business in 1978 is from the Annual Retail inquiry of that year, and Note 1 to Table 3 is applicable.

* 1978.
† Includes bakery departments of Co-operative Societies.
‡ Excludes bakery departments of Co-operative Societies.
¶ See Note 4 to Table 3.

TABLE 6 **Percentage distribution of retail sales between Independent (I), Multiples (M) and Co-operative (C) retail organisations**

| | *1957* | | | *1966* | | | *1971* | | | *1978* | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| *Product category* | I % | C % | M % | I % | C % | M % | I % | C % | M % | I % | C&M % |
| Food | 58·4 | 19·5 | 22·1 | 50·6 | 14·1 | 35·3 | 48·9 | 11·7 | 39·4 | 39·1 | 60·8 |
| of which: | | | | | | | | | | | |
| Groceries and provisions | (51·7) | (21·9) | (26·4) | (44·2) | (14·7) | (41·1) | (42·1) | (12·2) | (45·6) | 29·4 | 70·6 |
| Alcoholic drinks | 67·4 | 0·8 | 31·8 | 45·5 | 5·0 | 49·4 | 36·5 | 7·3 | 56·2 | 26·6 | 73·5 |
| Confectionery, newspapers, tobacco | 78·4 | 9·8 | 11·8 | 78·2 | 9·8 | 12·0 | 72·6 | 6·6 | 20·8 | 59·3 | 40·7 |
| Drugs, medicines toiletries | 54·7 | 8·1 | 37·2 | 55·8 | 6·8 | 37·4 | 55·7 | 4·9 | 39·4 | 48·3 | 51·7 |
| Clothing and footwear | 56·9 | 5·6 | 37·5 | 51·2 | 4·2 | 44·6 | 48·4 | 2·9 | 48·7 | 42·5 | 57·3 |
| Household goods | 67·7 | 6·4 | 26·0 | 64·5 | 7·4 | 28·1 | 63·1 | 5·4 | 31·5 | 49·7 | 50·2 |
| Other products and receipts | 69·2 | 10·1 | 20·7 | 66·5 | 6·3 | 27·2 | 65·7 | 4·8 | 29·5 | 57·9 | 42·0 |
| Total | 63·0 | 12·2 | 24·8 | 58·0 | 9·3 | 32·8 | 55·9 | 7·2 | 36·9 | 46·4 | 53·6 |

*Sources:* Censuses of Distribution for 1957, 1966 and 1971; Retail inquiry for 1977.

*Note:* In 1977 the statistics do not distinguish Co-operatives; however, nearly all will have been classified among multiples.

TABLE 7 **Number of grocers' shops**

| | *1961* | *1966* | *1971* | *1976* | *1977* | *1978* | *1979* |
|---|---|---|---|---|---|---|---|
| Multiples | 16,522 | 14,115 | 10,973 | 7,960 | 7,000 | 6,440 | 6,015 |
| Co-operatives | 13,919 | 12,819 | 7,745 | 6,270 | 6,000 | 5,760 | 5,552 |
| Independents | 116,336 | 96,451 | 86,565 | 66,000 | 63,000 | 60,000 | 57,000 |
| Total | 146,777 | 123,385 | 105,283 | 80,230 | 76,000 | 72,200 | 68,567 |

*Source:* Census of Distribution up to 1971; IGD estimates from 1974.

TABLE 8 **Average turnover (£'000, 1978 prices) of retail outlets**

| | *1950* | *1961* | *1971* | *1978* |
|---|---|---|---|---|
| *Total retail trade* | | | | |
| Multiples | 121·1 | 150·2 | 224·6 | 323·0 |
| Co-operatives | 133·6 | 126·5 | 177·2 | 294·3 |
| Independents | 39·4 | 46·2 | 53·0 | 75·1 |
| (as % of multiples) | (33%) | (31%) | (24%) | (23%) |
| All | 51·3 | 63·3 | 81·3 | 127·6 |
| *Grocers and provision dealers* | | | | |
| Multiples | 95·5 | 148·6 | 413·9 | 788·7 |
| Co-operatives | 152·2 | 136·2 | 175·0 | N/A |
| Independents | 35·2 | 41·1 | 50·3 | 67·0 |
| (as % of multiples) | (37%) | (28%) | (12%) | (9%) |
| All | 50·7 | 62·1 | 97·4 | 182·0 |

*Sources:* BSO—Censuses of Distribution and 1978 Retail inquiry.
CSO—Retail Price Index (all items).

NB In the above tables 'multiples' include those Co-operative societies (the vast bulk) with 10 or more outlets, and 'Independents' include those Co-operative societies with less than 10 outlets. Their inclusion with multiples and independents distorts the results pertaining to those categories, at least to the extent that the average size of Co-operative outlets differs from those of the other categories. Co-operatives are 'double-counted' in these tables.

* 1978 figures relate to 'grocers and general food retailers' and are thus only approximately comparable with preceding years' figures. Many well known 'grocery' businesses are almost certainly classified in 1978 under Mixed Retail Business (see note 4 to Table 3) and are thus not included among 'grocers and provision dealers' within this table.

TABLE 9 **Number of supermarkets by type of organisation**

| | *Multiples* | *Co-operatives* | *Independents* | *Total* |
|---|---|---|---|---|
| 1971 | 3,170 | 985 | 645 | 4,800 |
| 1972 | 3,270 | 1,200 | 670 | 5,140 |
| 1973 | 3,595 | 1,550 | 695 | 5,480 |
| 1974 | 3,578 | 1,562 | 660 | 5,800 |
| 1975 | 3,651 | 1,578 | 671 | 5,900 |
| 1976 | 3,500 | 1,674 | 716 | 5,890 |
| 1977 | 3,470 | 1,642 | 1,078 | 6,190 |
| 1978 | N/A | N/A | N/A | 7,160 |
| 1979 | N/A | N/A | N/A | 7,130 |

*Source:* Institute of Grocery Distribution

TABLE 10 **Percentage of selling area devoted to food in grocery stores**

| *Size category (sq ft)* | *Food area as % of selling area* | | |
|---|---|---|---|
| | *1974–75* | *1975–76* | *1976–77* |
| Under 2,000 | 94 | 97 | 97 |
| 2,000 – 3,999 | 92 | 95 | 97 |
| 4,000 – 9,999 | 91 | 92 | 91 |
| 10,000 – 24,999 | 83 | 80 | 90 |
| 25,000 – 49,999 | 56 | 52 | 65 |
| 50,000 and over | 44 | 38 | N/A |

*Source:* Institute of Grocery Distribution.

(iv) *Impact of large stores*

A number of studies have attempted to measure and analyse the impact of the introduction of such stores (which sell not only groceries but also a wide range of other foods and non-food items) on local competition. While it is difficult to summarise such findings, some results were common to a number of studies, for example:

(*a*) The impact depends on the existing retail structure. Independents are only seriously affected if, prior to the entry of the superstore, they played a major role in the local market. If they had already largely been displaced by multiples' competition, the survivors would be little affected by the entry of a superstore.

(*b*) The impact is felt more by self-service than counter-service stores. Local Co-operatives and multiples tend to face more competition from the superstore than do independent retailers.

(*c*) The impact declines with distance from the superstore but even fairly distant large stores are affected by the superstore competition, whereas small independent stores distant from the superstore are unaffected.

(*d*) Prices and margins fall, and productivity may rise, as a result of the superstores' advent.

(*e*) The principal impact is felt by shops selling food (especially standardised, less perishable, products)—the impact on non-food shops is much less.

(v) *Number and size of retail organisations*

Table 5 indicates the extent to which official statistics are able to chart the growth in the multiples' share of the grocery market. Information is also available from independent market research bodies, whose results are widely quoted in the press and elsewhere. Table 11 sets out information, relating to packaged groceries only, supplied by one of these, namely Audits of Great Britain Ltd (AGB), showing changing market shares among multiples, Co-operatives and independents, the latter divided between those who are members of voluntary groups (symbol retailers) and those who are not. Between 1961 and 1971 the number of multiple grocery retail organisations fell by 45 per cent, while the number of Co-operative retail organisations fell by 60 per cent in the same period.[1] Such rationalisation has reduced the number, while increasing the average size, of trade buyers in the grocery market. Table 12 shows that advertising by retailers in general increased over the period at a proportionate rate almost double that of manufacturers' advertising generally and more than double that of food manufacturers in particular.

(vi) *Economies of scale*

Chart II demonstrates how turnover per employee increases with size (defined in terms of turnover) of grocery establishment. The chart also shows how this relationship strengthened in the successive census years 1961, 1966 and 1971, as the largest establishments were increasingly able to exploit economies of scale.

[1] Census of Distribution. Comparable official statistics are not available for multiple grocery organisations after 1971. However, the number of grocery multiple businesses, including Co-operative multiples, fell by 20 per cent (from 138 to 110) between 1976 and 1978 (Business Monitor).

TABLE 11 **Percentage breakdown, between different types of retail organisation of packaged grocery sales made through grocers**

| | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980* |
|---|---|---|---|---|---|---|---|
| Multiples | 52.6 | 55.2 | 56.9 | 60.3 | 63.9 | 65.4 | 67.8 |
| Co-operatives | 20.6 | 20.2 | 20.4 | 19.0 | 17.9 | 17.6 | 16.7 |
| Symbol Traders | 14.1 | 13.5 | 12.5 | 11.5 | 10.1 | 9.4 | 8.4 |
| Other Independents | 12.7 | 11.1 | 10.1 | 9.3 | 8.1 | 7.7 | 7.1 |

*Note* Businesses selling groceries but excluded from the definition 'grocers' include Boots, Woolworths, Marks & Spencer, department stores, street traders and miscellaneous small outlets which may sell some packaged groceries as well as other goods.

* 28 weeks ending 21 June 1980.

NB These figures are derived from a weekly audit of a panel of 6,250 private domestic households. This weekly audit monitors purchases in 75 packaged grocery markets which account for approximately 60 per cent of packaged grocery expenditure. The grocery retail groups shown in this chart currently account for an estimated 87 per cent of packaged grocery sales.

*Source:* Audits of Great Britain Ltd.

TABLE 12 **Estimated media expenditure 1970–78**

| | *1970* | *1972* | *1974* | *1976* | *1978* |
|---|---|---|---|---|---|
| *Manufacturers* (£m) | 207 | 257 | 285 | 403 | 597 |
| (Index) | (100) | (124) | (138) | (195) | (288) |
| of which, food (£m) | 62 | 82 | 81 | 112 | 165 |
| (Index) | (100) | (132) | (131) | (181) | (266) |
| *Retailers* (£m) | 56 | 84 | 134 | 206 | 307 |
| (Index) | (100) | (150) | (239) | (368) | (548) |

*Source:* '*Advertising*' (Journal of the Advertising Association).

(vii) *Grocery wholesaling*

Few statistics are available but the principal changes appear to have been:

(i) A division of wholesaling into the delivered trade, currently accounting for about half of grocery wholesaling turnover, and the cash-and-carry trade, which started to grow in the early 1960s, and tends to be used for basic purchases by smaller independent retailers and caterers and for general topping-up purchases by larger retailers and caterers. Grocery wholesale turnover, according to IGD, was about £3,750 million in the year ending 1 June 1979.

(ii) Diversification of product coverage, paralleling that in the retail sector, and increasing service to sectors other than independent retailers. IGD recently estimated the following breakdown of sales by cash-and-carry wholesalers:

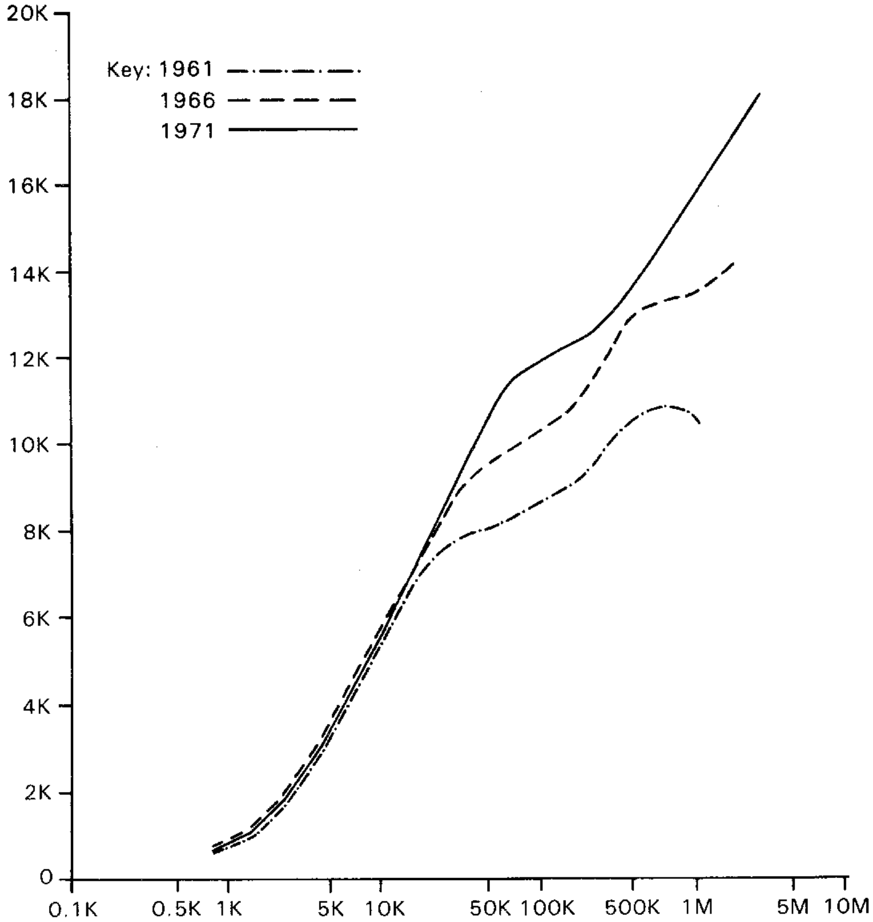
Sales to: Grocers 43 per cent
Caterers 33 per cent
Others 24 per cent

(iii) A considerable decline in the numbers of wholesalers, and greatly increased concentration of the remaining companies.

CHART II **Labour productivity related to size of establishment**

**Grocers and Provision Dealers**

| | 1961 | 1966 | 1971 |
|---|---|---|---|
| Turnover (£M 1971) | 3207.9 | 3866.8 | 4156.5 |
| Turnover per full-time equivalent (£1971) | 6787 | 9189 | 10056 |




Average turnover per establishment (£1971: log scale)

*Source:* Distributive Trades EDC, A Structural Model of the British Retail Trade (1979)

APPENDIX 2

*(referred to in paragraphs 3.9, 8.6, 8.10)*

# Overseas legislation

1. Action against price discrimination comes within the scope of the competition laws of a number of overseas countries but not all.[1] Some countries have legislation which is based on a general prohibition of price discrimination as such, the most far-reaching being that of the USA and France. A similar approach is adopted in Australia if the practice lessens competition, and there is also a measure of prohibition in the Irish Republic and Canada, although of less extensive effect. These are described below. In other countries the provisions fall short of a comprehensive prohibition. The practice tends to be dealt with in individual instances where there is thought to be some abuse of market power or a damaging effect on competition or it arises from a restrictive agreement. A detailed account of all the various competition laws would not be in place here but the position in the Federal Republic of Germany, where relatively greater attention has been given to the matter, is also described below, as are the relevant EEC rules.

**Australia**

2. Section 49 of the Trade Practices Act 1974, as amended, prohibits suppliers from discriminating between purchasers of goods of like grade or quality as respects (a) price (b) discounts, allowances, rebates or credits (c) services or facilities provided or (d) payments for them, if the discrimination 'is of such magnitude or is of such a recurring or systematic character that it is likely to have the effect of substantially lessening competition' for goods, including goods which are 'substitute for, or otherwise competitive with' them. The prohibition does not apply if a supplier makes 'only reasonable' allowances for differences in cost of manufacture, distribution, sale or delivery or is acting in good faith to meet a competitor. A customer must not knowingly induce or benefit from prohibited discrimination unless he reasonably believes that the prohibition does not apply for the reasons stated above. In any proceedings the onus rests on the supplier or customer, as the case may be, to establish that the justifications referred to are valid but it must first be demonstrated that the discrimination has or is likely to have the effect of substantially lessening competition.

3. Responsibility for enforcement rests on the Trade Practices Commission which has put considerable effort into seeking to achieve compliance by publicity and by discussion with the parties concerned rather than by proceedings in the Federal Court. The Commission or the Minister may bring such proceedings and the Court is empowered to impose fines or grant injunctions restraining parties from engaging in conduct that constitutes a breach of section 49. Private actions may also be brought for injunctions and compensation

[1] An account of overseas competition legislation may be found in Annex C of 'A Review of Monopolies and Mergers Policy' (Cmnd 7198) and Annex B of 'A Review of Restrictive Trade Practices Policy' (Cmnd 7512) published in May 1978 and March 1979 respectively.

for loss or damage suffered by reason of prohibited discrimination. Several such actions have been brought. The Commission[1] considers that in general there appears to have been a considerable measure of voluntary compliance with the legislation on the part of suppliers.

4. It must be kept in mind that, as the Commission has had occasion to emphasise, the section is significantly different from the US Robinson-Patman Act since its object, like that of the other provisions of the Trade Practices Act, is to preserve and enforce competition in general and not to protect the interests of particular competitors. Price discrimination which is not justified by reference to cost differences or the need to meet a competitor is not necessarily prohibited. The crucial issue is whether it *substantially* lessens competition. Even when a competitor is harmed or eliminated as a result of discrimination, this does not in itself necessarily imply that competition in the market has been lessened.

5. There has been criticism of the law on grounds of uncertainty and adverse effect on prices. The Swanson Committee[2] in 1976 concluded that it substantially reduced price flexibility in Australian conditions since in oligopolistic industries competition in list prices was likely to be limited and selective price cuts to large customers covering variable rather than average costs might trigger more competitive pricing. Criticisms of this kind were endorsed by the 1979 Report on Small Businesses and the Trade Practices Act by the Trade Practices Consultative Committee which recommended the repeal of section 49 and did not recommend that it be brought closer to the Robinson-Patman Act in view of the extensive adverse comment the latter had received. On the other hand it has been argued that the section has reduced the pressure for preferential treatment from large buyers and is assisting the long-term maintenance of a competitive structure. There was an announcement in May 1977 to the effect that the Government had decided to leave the price discrimination provision unchanged.

6. Definitive interpretation of the situations in which price discrimination is prohibited or of the concepts of 'reasonable allowance' for cost differences or of meeting prices offered by a competitor require decisions by the Court and it may be several years before the full operation of the Act can be adequately assessed.

7. In its Fifth Annual Report (June 1979), the Trade Practices Commission expressed the belief that cases within section 49 were likely to have at least some of the following elements:

(*a*) a supplier with significant market power whose discrimination is substantial, recurring, and affects a large proportion of the trade;

(*b*) efficient resellers whose opportunity to compete effectively is put at risk by the discrimination against them;

[1] As at October 1979.

[2] Trade Practices Act Review Committee Report to the Minister for Business and Consumer Affairs (August 1976).

(*c*) the resellers discriminated against having limited opportunity to look elsewhere for supplies on better terms;

(*d*) big buyers pressing for discrimination; and

(*e*) alternative suppliers small or weak or facing entry barriers that may be erected or reinforced by discrimination foreclosing access to leading outlets.

**Canada**

8. Competition legislation in Canada has paralleled that in the USA, the basic laws being enacted in 1889 and 1910. The provisions for dealing with price discrimination go back to 1935 and were formally incorporated in the Combines Investigation Act in 1960. Section 34(1) makes it a criminal offence to take part in sales that discriminate by discounts, rebates, price concessions or other advantages in respect of articles 'of like quality and quantity', where such discrimination is part of a practice of discriminating. There is no cost justification or 'meeting competition' defence. Subsequently section 35(2) prohibited the granting of an allowance for advertising or promotion not granted to competing purchasers 'on proportionate terms'.

9. The investigation into possible offences is the responsibility of the Director of Investigation and Research who undertakes inquiries when he has reason to belive that grounds exist. Hearings may be held by the Restrictive Trade Practices Commission and legal action taken by the Attorney General of Canada. The Act also provides a right of civil action for damages resulting from an offence under the Act. There have been no contested cases under section 34.

10. The application of the price discrimination provision is narrow since it does not prevent discrimination where different *quantities* are involved (and thus does not extend to discrimination between large and small buyers) and enforcement may also have been inhibited by its inclusion within the criminal law. It has been suggested that there may have been some deterrent effect.

11. Since 1950 aspects of Canadian competition policy have been the subject of several official reviews and inquiries and there have been a number of proposals for amendment, including suggestions for the amendment and extension of section 34(1). Proposals have been made for a wider control over price discrimination (in addition to the provisions described above) where it is found that the supplier is a major supplier, or one of the suppliers, in a market where the practice is widespread and that the practice has substantially impeded or is likely to impede the expansion of an efficient firm or a firm that, but for the practice, would be a strong competitor. The practice might be permitted if based on 'a reasonable assessment of the difference in the actual or anticipated cost of supplying customers'.

**European Economic Community**

12. Article 85 of the Treaty prohibits all agreements or concerted practices which have as their object or result the prevention, restriction or distortion of competition within the Common Market and a number of practices are

specifically listed as particularly included within the prohibition, one of which is (d) the application of 'dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage'. Article 86 prohibits the abuse of a dominant position by one or more undertakings and in this connection particularly lists (a) the imposition 'directly or indirectly of any unfair purchase or selling prices or other unfair trading conditions' and (c) the application of 'dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage'. These articles apply if trade between member states is or may be affected and Article 86 speaks further of practices within 'a substantial part' of the Common Market. The EEC Commission, which administers the competition rules, has given a wide interpretation to these provisions and there have been cases under Article 86 arising from infringements operating in only one country. There have been a few major cases dealing with price discrimination.

**France**

13. Under the French law discriminatory pricing not justified by cost differences is prohibited as such, irrespective of whether the discrimination is harmful to competition or represents the abuse of a dominant position. Major purposes of the legislation, which was considerably strengthened in 1973, are the protection of small traders and the effective operation of competitive conditions.

14. The basic provision is section 37 of the 1973 Act Regulating Trade and Crafts ('Loi Royer'). Sub-section 1 prohibits discriminatory prices or conditions of sale which are not justified by corresponding differences in the cost price of articles or services supplied and sub-section 2 declares it unlawful to circumvent this prohibition by directly or indirectly giving any reseller gifts in kind or in cash or free services. Further, a producer must furnish his price lists and conditions of sale to any reseller who so requests. Under section 38 a reseller may not seek or knowingly accept from a supplier any benefits contravening section 37. These and certain other provisions referred to below have been explained in considerable detail by an administrative circular issued in January 1978 ('Circulaire Scrivener').

15. The circular makes it clear that the relevant price is the net price, having regard to all advantages granted by the supplier, including those not shown on the invoice; and that discriminatory conditions of sale include not only discounts, end-of-period rebates and deferred rebates related to targets but also such matters as the time required to meet an order, delivery and packaging conditions, payment terms and remuneration by various means for commercial co-operation and for products and services not invoiced. If 'own label' goods are similar to the manufacturer's brand a price difference must be justified, for example, through cost savings derived from production planning and marketing costs.

16. The circular recognises that the assessment of relevant costs is not easy (and it is understood that this aspect has given rise to difficulty in practice). Marketing costs are said to vary according to the size of quantities delivered

in a single delivery, the quantity delivered over a period of time, the spread and regularity of deliveries, the services rendered by the supplier to the buyer and vice versa. Periodical or end-of-year rebates may be increased in proportion to savings if the buyers have made firm commitments which enable the activities of the buyer to be planned more efficiently.

17. As regards section 37(2), the circular notes that gifts of goods or cash or the performance of free services are prohibited if not offered to all customers, unless justified by differences in costs. Among the types of payment or services which distributors are prevented from seeking from suppliers under section 38 are entrance fees, start-up bonuses in respect of first orders, sample bonuses, investment allowances, contributions towards the fitting out or renovation of commercial premises or the remuneration of employees.

18. The requirement that producers should furnish buyers on request with their price lists and conditions of sale is imposed so that the latter should be enabled to ensure that they are not victim to discrimination. There is no obligation to communicate to others special terms negotiated with individual buyers to provide recompense for services actually rendered (known as commercial co-operation agreements), but the seller must normally be prepared to disclose them to the authorities and indicate what is being offered by the distributors in exchange.

19. The circular also stresses that it may be discriminatory for powerful distributors to be enabled to defer payment for goods with a rapid turnover, thus in effect obtaining financial facilities from their suppliers, and emphasises the need to revert to terms of payment more closely related to the turnover of stocks. Section 41 of the Act in fact prescribes that payment for perishable goods must be made within 30 days after the end of the month of delivery.

20. Section 45 of the Act allows individuals damaged by unlawful practices to bring civil actions but in practice there have been few such proceedings. The provisions are enforced by the administrative authorities (notably the Directorate General for Competition and Consumer Affairs within the Ministry of Economics) with considerable emphasis on securing voluntary compliance, but there are powers of enforcement and a relatively small number of cases have been brought before the courts. Previously enforcement may have been assisted by the extent of governmental intervention and widespread price controls which have since been relaxed and the legislation is now operated as an element in measures aimed to achieve the satisfactory functioning of the market, including action against restrictive agreements and the abuse of dominant positions.

**Federal Republic of Germany**

21. Administration of the Competition legislation is the responsibility of the Federal Cartel Office (FCO), subject to appeal to the courts. Under section 22 of the 1957 Act against Restraints of Competition, as amended, the FCO is empowered to take action against misuse of their position by market-dominating enterprises including the different treatment of suppliers or purchasers without sound and proper reason. By section 26, under which private

actions may also be brought, market-dominating enterprises (including enterprises on which the supplier or purchaser is dependent by not having the opportunity to go elsewhere) may not apply different treatment to similar enterprises in the absence of facts justifying such differentiation or unfairly hinder them or use their own market position to secure advantageous conditions unless there are sound and proper reasons. There has in practice been little experience of successful cases involving discrimination brought against suppliers or any cases against distributors.

22. In addition, under the Act against Unfair Competition, which dates back to 1909, decisions have been made by the courts against certain types of conduct in particular cases, for example, demanding payment of entry money by a retailer for increasing the range of a supplier's product, offering money by a manufacturer for shop window display, demanding extra payment towards advertising costs or for the price marking of goods by the supplier. An underlying principle in Germany has been the importance attached to maintaining what is described as 'competition by performance' or 'reciprocity', namely that extra concessions should not be extracted unless something is granted in return. The need to preserve a small and medium sized business sector is also regarded as important.

23. The Act against Restraints of Competition (section 28) also provides for trade associations to establish self-regulatory codes which may be registered with the FCO for counteracting conduct which is inconsistent with fair competition or the functioning of effective competition. In 1974 the Ministry for Economic Affairs issued for guidance a catalogue of practices ('list of sins') which might distort competition by performance. These included payments for first time orders or regular stocking, shelf space rent, special contributions to customers' advertising, shelf-filling and price marking by supplier, assistance with customers' stocktaking, contributions to investment in new shops or equipment, excessive piling up of special rebates, inordinately long credit, loans on favourable terms, transfer to suppliers of costs arising from the way in which the customer's business is organised.

24. In 1975 a Joint Statement was issued by many leading representative organisations in trade and industry following up this initiative. In 1976 a Code of Practice was issued by the Association of Branded Product Manufacturers (Markenverband). These were directed against the distortion of fair competition and instanced a number of the practices referred to above and related matters such as incentives to customers or their staff to favour the supplier, disproportionate business gifts, distribution of coupons by suppliers (other than special promotions agreed with customers).

25. Similar rules have also been registered by a wide range of other manufacturing, but not retailing, associations. The rules do not cover discounts in their many forms and are not binding. Thus their effect has been limited but they have been cited in the courts and are thought to have had some influence on the climate of opinion.

26. There has been much discussion in recent years of the problems arising from buying power. In its 1977 report on the subject the German Monopolies Commission took the view that any general prohibition of discrimination aimed at eliminating price disadvantages suffered by competitors of major buyers would not be consistent with encouraging vigorous price competition.

**Republic of Ireland**

27. The basic Irish competition law is the Restrictive Practices Act 1972 which consolidated and amended the Acts of 1953 and 1959. The Act provides, *inter alia,* for investigations by the Examiner of Restrictive Practices, public inquiries by the Restrictive Practices Commission and orders by the Minister, as considered necessary. There is no automatic prohibition of any individual practice but specific restrictive or unfair practices or methods of competition in a particular trade or industry (including price discrimination) may be prohibited by the Minister on the recommendation of the Commission and there is also scope for making fair practice rules.

28. Over the period since 1955 orders have been made following enquiries into radios, carpets, petrol, jewellery, electrical applicances and other products. These orders have been concerned with other practices as well as price discrimination and action in relation to the latter has been somewhat limited in scope. By contrast, however, it has been of central importance in relation to the grocery trade in which the decline of independent retailers has given rise to considerable concern and there have been several separate inquiries, reports and orders over the period. The most important enactment is the Restrictive Practices (Groceries) Order 1973 and the amending order of 1978.

29. Under the order, suppliers must prepare and maintain a written statement of their standard terms and conditions of supply as well as supplementary terms and credit terms. These must be adhered to and provided to the Examiner and on request to wholesalers and retailers. Discounts may be related to distribution functions or quantity or value of the goods. Discounts for single deliveries must take 'reasonable account' of their costs and, for aggregate purchases over a period, of the number of places to which deliveries are made and their frequency. Terms and conditions must be 'reasonable, having regard to all the circumstances' and not such as 'unfairly or unjustly' to force established distributors out of business or prevent new ones entering or 'discriminate against any wholesalers or retailers'. Supplementary terms (ie discounts or rebates for increases in purchases above a specified amount over a specified period or for special promotion arrangements) must not be substantially bigger than standard discounts and must be 'determined by reference to objective criteria' and to the percentage increase in purchases 'as closely as circumstances allow'. Payments of allowances or discounts may not be made to wholesalers or retailers in consideration of advertising of the goods by them. A wholesaler or retailer may not induce a supplier to sell to them on terms which contravene the order. If the Examiner considers that a supplier's terms constitute unfair discrimination he may require them to be amended. Civil proceedings may be instituted for damage suffered as a result of breach of the order.

30. As a result of problems encountered in the operation of the order, amendments directed towards greater flexibility were introduced by the Restrictive Practices (Groceries) (Amendment) Order 1978. Thus, discounts were additionally permitted to be related to 'any other objective criteria which are designed to promote efficiency in supply or distribution and which are necessary in the legitimate interests of the supplier's business' and to take 'reasonable account of economies of supply and distribution' and not merely costs of delivery, while discounts for purchases over a period need not be strictly related to the number and frequency of deliveries.

31. The implementation of the order has proved to be difficult in practice. This is thought to be due to the complexity of the issue and the ambiguity of a number of the provisions, as well as to the bargaining strength of multiple retailers combined with the ability to switch purchases to suppliers overseas. The problem of cost-relatedness has been a particularly difficult area, as has been the enforcement of the requirement to publish terms and conditions where special terms are not included in the invoice. Not many cases have been brought before the courts either by the authorities or private persons and the course of events has been complicated by boycott action. The Examiner has been conducting discussions with manufacturers and distributors with a view to agreement over terms of supply. Some progress has been made in limiting the practice of advertising goods at below cost price and preventing excessive delay in payment by distributors with a view to gains in financing.

## USA

32. The main legislation governing price discrimination in the USA is the 1936 Robinson-Patman Act (the Act), formerly an amendment of section 2 of the 1914 Clayton Act. It was primarily directed against discriminatorily low prices given to large buyers where the effect of such discrimination might be to impair the viability of the supplier's or the favoured purchaser's smaller competitors as well as others adversely affected in the chain of distribution. The Act applies to all relevant instances of discrimination and neither collective action between buyers nor the possession of monopoly power need be present. It was enacted as one of a number of measures following the Depression to protect small business and particularly reflected the fears of the small independent grocery retailers over the widespread advancement of chain stores.

33. Section 2 (*a*) and (*b*) prohibit price discrimination by a seller that may injure competition either with the seller or the buyer or with customers of either where the discrimination is neither cost justified nor made in a *bona fide* effort to meet competition; section 2 (*c*) is an anti-evasion provision which prohibits certain payments made or received for brokerage services that are not rendered; section 2 (*d*) and (*e*) prohibit the granting of discriminatory promotional allowances or services; while section 2 (*f*) imposes a liability on buyers by prohibiting them from knowingly inducing or receiving a prohibited discrimination. These provisions may serve as the basis for a civil action by the Federal Trade Commission (FTC) or the Department of Justice or

for an action by an injured private party. Section 3 is a rarely invoked criminal provision which also outlaws sales at unreasonably low prices for the purpose of eliminating competitors.

34. Under liaison procedures between the Department of Justice and the FTC, the latter has taken primary responsibility for the public enforcement of the Act. It operates on the basis of complaints and its own powers to obtain information from companies and takes action by formal proceedings and informal methods. The former involve formal complaints and hearings and may result in a 'cease and desist' order which has the force of law but may be reviewed by the courts. Informal methods include assurances of voluntary compliance, advisory opinions and consent settlements. The FTC also issues Trade Practice rules and guides as practical manuals for businessmen seeking to comply with the law. In addition, the anti-trust laws permit persons injured by unlawful action to sue for treble damages (plus costs) and in recent years most cases under the Act have been brought by private parties.

35. The Act has given rise over the years to a massive administrative and legal effort at a very great cost to all concerned. It has been stated 1,395 orders were issued by the FTC between 1936 and 1971. Authoritative studies of the Act have occasion to refer to hundreds of legal cases of some importance. All this is likely to be no more than the tip of the iceberg having regard to other proceedings and activities and out-of-court settlements. An intricate system of elaborate case law has grown up in developing all the legal implications of the Act to a far greater extent than, it has been suggested, may have been originally foreseen.

36. In view of the large body of case law which has grown up and the changing judicial and administrative interpretation of the Act, it is difficult to give a brief explanation of the meaning of the Act without over-simplifying a complex body of doctrine. The following account is primarily designed to provide a broad indication of its general features and problems rather than an exhaustive statement of US law.

37. The basic provision makes it unlawful 'either directly or indirectly to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . .' The relevant discrimination has been deemed to extend to a price differential of any amount and to anything which can be translated into a price advantage. The adverse effect on competition test is widely applied in practice to include damage to competitors of suppliers and of customers at the several different levels of the distributive process (including, for example, injury suffered by a trade purchaser in competition with a customer of a customer of the supplier's favoured purchaser), and actual injury need not be shown; it is enough that there is a reasonable probability or possibility of injury and it may amount to potential damage in the sense that it may be inferred from the mere existence of price differentials sufficient to influence resale prices.

38. The main defence which can be brought against an allegation of unlawful discrimination is that the price differential may make 'only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purchasers sold or delivered'. Defendants have found that this is often very difficult and expensive to establish and the requirements of the FTC have been strict. The decisions of the courts have reflected a diversity of approach. It must apparently be shown that the cost savings account for nearly all the discount granted and elaborate and precise cost justification studies may have to be prepared and submitted without any certainty that they would prove acceptable. It is recognised that some degree of averaging is unavoidable but defendants' studies have on occasion been rejected because the courts have found that the customer groupings adopted were inappropriate. Generally, acceptable cost savings may include any aspect of transport, advertising, sales promotion, selling and technical services, warehousing and storage, credit and sales management. A defence based on savings in manufacturing costs has been allowed only in exceptional circumstances but the role of incremental or marginal cost in determining price is disregarded under the defence. Cost saving exercises must be based on provable and past average costs, not estimates.

39. The other main defence is that a seller may show that his lower price (or the furnishing of services or facilities) was given 'in good faith to meet an equally low price of a competitor, or the services or facilities provided by a competitor'. This defence has also given rise in practice to considerable difficulty and numerous questions have arisen concerning its application. It has been interpreted to mean that a seller may 'meet but not beat' a competitor's price, unless the latter is unknowingly done in good faith. The good faith concept is also important in relation to the difficult question of whether the defence is available simply if it is not known that the price sought to be met is unlawful. It has been held that the defence does not extend to a situation in which a supplier gives a discount to help a customer meet competition. Another problem has been the risk that exchanging price information or price discussion between competitors (for verification purpose) could involve anti-competitive activity in violation of other provisions of the anti-trust laws.

40. As regards promotional or other allowances or assistance, the granting of allowances for services or facilities provided by or through the purchaser in connection with the processing, handling, sale or offering for sale of the goods or the furnishing of any services or facilities to the purchaser are prohibited unless the concessions are accorded 'to all purchasers on proportionally equal terms' and the only defence of discrimination available is that of meeting competition (paragraph 8 above). Implementation of these provisions by the FTC and the courts have resulted in the creation of a complex scheme of regulations governing marketing and promotional policies.[1] Thus promotional allowances are apparently unlawful when their existence is not made known to all competing customers, when they are structured in a way that prevents

[1] The FTC issued detailed guides for Advertising Allowances and other Merchandising Payments and Services in 1969 following the Supreme Court's decision in *FTC* v *Fred Meyer, Inc*, 390 US 341 (1968).

certain competing customers from using them at all, or when minimum requirements or conditions of participation effectively exclude certain customers (for example, smaller firms) from the benefit. For instance, the supplier has an obligation to make available to retailers who purchase through wholesaler or other intermediaries allowances comparable to those available to retailers who purchase direct.

41. Although enforcement of the Act has been mainly directed against sellers, it is unlawful for a buyer 'knowingly to induce or receive a discrimination in price which is prohibited'. Emphasis has been laid on the importance of the fact that the relevant discrimination was that for which the seller had no reasonable defence so that it was unlawful under the Act. It has been stressed that it was necessary to interpret the Act so as not to conduce towards a price uniformity and rigidity in conflict with the purposes of other anti-trust legislation.

42. Over the years since its enactment, the Act has been the subject of continuing controversy. It has been subject to widespread adverse comment from economists, lawyers and businessmen and over the last decade there have been a number of strongly critical reports from official and other quarters including a detailed and comprehensive report from the Department of Justice.[1] This argued that the evidence was that the Act promoted high prices, restricted entry to, and reduced competition and efficiency, in distribution, as well as encouraging illegal 'pricing exchanges' between competing manufacturers. The risk of Robinson-Patman litigation and of substantial treble damage losses and the uncertainties of the law was said to have instilled 'pricing caution' into suppliers, induced undue restraint in buyers' bargaining, encouraged the maintenance of uniform list prices in oligopolistic manufacturing industries and discouraged entry into new markets and competition for new customers by preventing price reductions restricted to particular districts or to particular customers. It has also been argued that the Act has not in fact significantly contributed to the preservation of independent shops and has actually operated against the interests of those whom it was supposed to help by exposing joint buying groups formed by independent distributors to legal action, while large integrated firms could find ways round it by combining distributive functions, purchasing products with minor differences in specification or dealing with captive suppliers who sold to no-one else and integrating backwards by establishing their own brands or even manufacturing facilities. Nevertheless firms are said to be subjected to the onerous burden of an elaborate and expensive regulatory system and to the need for continuing recourse to specialised legal and accountancy advice in finding their way through the complexities which the Act imposes on taking normal pricing decisions.

43. At the same time, the Act has its staunch supporters[2] particularly amongst those who believe that, without it, wholesalers and independent retailers would have lost ground even more to chain stores, that efficient

[1] Department of Justice Report on the Robinson-Patman Act (1977).

[2] For example the report of the Ad Hoc Sub-Committee on Anti-Trust, the Robinson-Patman Act and Related Matters of the Committee on Small Business of the House of Representatives (1976).

small competitors would be eliminated by unfair trading and that the Act remains essential in order to preserve small business and the values that go with it. It appears that no specific changes to the Act are currently being contemplated and that in the more recent period the controversy surrounding it has somewhat subsided. This may be partly due to the careful and selective use of discretion on the part of the enforcement authorities and the effect of recent judicial interpretation.

44. Although there appears to be no early prospect of legislative change, the following proposals for amendment of the Act advanced in the Department of Justice report referred to above are of interest. It was suggested that action against price discrimination should be limited to situations highly likely to harm competition, for example, systematic favouritism of large purchasers over small or a clear threat to eliminate from the market a competitor of the seller's customer where the result may be lessened competition. The supplier should be permitted to make estimates of the costs involved in a particular transaction or of the differences in serving particular groups based in good faith on reasonable business practice. The 'meeting competition' defence should be capable of being used to gain new customers as well as to retain old ones. Because of the overriding need to weigh carefully both the potential benefit and the potential harm to competition from a price reduction, proceedings should not be initiated without a serious attempt to evaluate the impact on the public interest of a given enforcement action, and the right of private action should be removed (or at least reduced to a single damages suit). These proposals have been criticised as liable seriously to weaken the impact of the Act and the interests it is intended to sustain.

## APPENDIX 3

*(referred to in paragraphs 3.12, 4.2, 6.28, 6.30, 6.31, 7.4, 8.22, 8.25, 9.5, 9.25)*

# Previous reports of the Monopolies and Mergers Commission referring to the practice

1. A number of reports of the Commission during recent years contain information and comment of interest in relation to the practice. This is summarised below. The summaries are mainly confined to the references to discounts to retailers in the reports most of which were, of course, also concerned to a considerable extent with other matters. We recognise that, since the reports were made, there may have been changes in some cases in the practices described as a result of the Commission's recommendations or otherwise. The numbers in brackets are to paragraphs of the reports.

**Electric Lamps, HC 4 (1968)**

2. The Commission found that British Lighting Industries Ltd (BLI) supplied over 40 per cent of the market and there were three other important suppliers (23). The evidence suggested that, despite the ending of collective price fixing in 1956 and of resale price maintenance in 1967, there had been no appreciable increase in price competition, including discounts. However there were signs of increasing independence of action among the principal manufacturers, including the introduction of new discount structures and certain confidential discounts to a few customers amounting to concealed departures from the normal uniformity of prices (52) and a marked increase in price competition during the later stages of the inquiry (77).

3. The distributive market fell into three main sectors—the traditional channels through wholesalers to electrical retailers, contractors and commercial and industrial users; sales direct by manufacturers to large users; sales in the 'cheap lamp sector' to electricity area boards, chain stores, multiples and the like at lower net prices or higher discounts than the main brands (14).

4. The Commission found that monopoly conditions prevailed by reason of the BLI share and also because at least one-third of the products were supplied by manufacturers who engaged in certain practices restrictive of price competition. These included relating discounts for individual buyers to the buyer's total purchases from all suppliers and arrangements for the exchange of information about total purchases of and discounts granted to wholesaler and user buyers and about changes in prices and discounts. These practices, *inter alia*, were found to operate against the public interest (147).

5. The Commission made a number of recommendations including the ending of the practices referred to above (147). They considered that the prices to individual buyers should be related to the cost of supplying them and to the value of their business to the supplier. The most appropriate method was a suitable scale of discounts related to the size or value of individual consignments but there was no objection to giving some recognition to the size of the whole order or to the value of the total business placed by a

supplier or the provision of different scales of discounts for wholesalers, retailers and other buyers if it was desired to give some extra reward in recognition of their part in selling and distributing (81).

**Primary Batteries, HC 1 (1974)**

6. The reference was concerned with zinc carbon batteries and mercury batteries. The Commission found that in 1973 sales of the former by Ever Ready Company (Holdings) Ltd amounted to 75 per cent of total sales in the United Kingdom and sales of the latter by Mallory Batteries Ltd to 70 per cent (21). Sales were made to wholesalers, retailers and importers and manufacturers of original equipment. Both allowed special discounts to some customers at various rates in excess of the standard discounts allowed to wholesalers and retailers (472). Ever Ready gave certain larger customers and multiples special discounts for quantity purchases in excess of the top rate and negotiated special terms with two large customers, discounts being related both to turnover in previous years and also to estimated turnover for the current year (58). In a few cases deferred rebates were given subject to the achievement of agreed annual sales targets but were in process of being discontinued (61). Mallory allowed some customers discounts at various rates off the standard trade price of special net prices (127) and negotiated retrospective annual rebates based on total purchases with six customers, taking account of past business or future forecasts (137), it being intended not to extend the practice (475).

7. It was not claimed that special discounts were even approximately equal to cost savings (473). The companies explained that their larger discounts were given as a matter of commercial necessity and because they had no alternative but to take account of the bargaining power of larger customers (474).

8. The Commission observed with reference to Ever Ready's discount scale for smaller retail customers, particularly in view of its brand reputation and wider range, that if the level of a customer's discount was thought to depend on the value of his purchases, he might to some extent be deterred from going elsewhere for part of his requirements. However, the public interest was not affected, since discounts were on balance used competitively, having regard to the flexibility of approach of Ever Ready and other suppliers (474). Retrospective annual rebates appeared in the limited form prevailing to be unnecessary and to have some anti-competitive effect but that was not significant (475). Such anti-competitive effects as Ever Ready's and Mallory's special discounts might have were not substantial, and there was no case for interfering with them (476).

**Contraceptive sheaths, HC 135 (1975)**

9. The report was concerned with the monopoly position of LR Industries Ltd (LRI), the only producer of the goods in the United Kingdom, with about a 90 per cent share of the trade (11).

10. The terms on which its brands were sold distinguished between different categories of customer (wholesalers, retailers, vending machine operators, clinics, hospitals and the Government). Clinics and hospitals bought at more favourable terms in some respects and the Government bought at lower prices. Prices for 'own label' brands and unbranded sheaths were appreciably lower than those of the same product sold under an LRI brand name (91). Wholesalers were allowed quantity discounts on all LRI brands supplied to them. Some 160 retailers (such as multiple stores and other large customers, for example mail order specialists) bought on the same terms as wholesalers but others were allowed direct buying discounts or quantity discounts on some products but not on others (92). LRI explained that prices and quantity discounts were not set by reference to cost differentials but with a view to providing a range of products from low to premium brands (174–175). The Commission did not in practice always find it possible to draw a clear line between price differences for different products and for different customers buying the same product (217). Different customers paid different net prices for the same brand (219).

11. The Commission regarded the wide differences between prices as reflecting the abnormal degree of discretion enjoyed by LRI, which had in general pursued a policy of charging what the traffic would bear, to fix prices to suit itself and the high profit margin it was therefore able to take on its home trade (221–222). The Commission concluded that its pricing policy operated against the public interest in that it resulted in excessive profits and that the differential price structure was both a deterrent to competitors and a means of exploiting the weakness of consumer pressure upon prices (254).[1]

12. The Commission recommended, *inter alia*, that there should be an overall price reduction (256) to be brought about by reducing the whole range of price differences (as between different brands and as between different customers for the same brand) not only in cash terms but also as percentages of the relevant prices (258).

**Frozen foodstuffs, HC 674 (1976)**

13. The report was mainly concerned with Birds Eye Foods Ltd which, with other subsidiaries of Unilever Ltd, supplied more than one-quarter of the United Kingdom market for the reference products (291). Other large suppliers with less than this share were Ross Foods Ltd and Findus Ltd and there were about 150 other processors of frozen foods varying greatly in size and range (48).

14. *Birds Eye's* fixed scale of discounts related to the size of individual orders only applied to voluntary groups, Co-operative societies and a small number of independent retailers (116). Discounts in the form of reductions

[1] The Secretary of State for Prices and Consumer Protection stated in the House of Commons on 16 October 1975 (*Official Report* Cols 805–807) that the Director General of Fair Trading had obtained certain undertakings from LRI to meet the suggestions made by the Commission providing, *inter alia*, for the introduction of a substantially revised and simplified wholesale discount structure which would not be changed without the consent of the Director General.

from published trade prices to a relatively small number of accounts were subject to individual negotiation, generally on an annual basis. They were generally influenced by such factors as total sales and turnover per branch in the previous year, the frequency and size of deliveries, acceptance of in-store promotions and agreement to extend or improve the retailer's refrigerated equipment. Discounts were influenced by and sometimes conditional upon the cabinet space devoted by the retailer to Birds Eye products and, particularly where the space was small, a discount might be offered for a commitment of the whole cabinet (117). Overriding discounts were paid retrospectively for the attainment of some target level of turnover (118).

15. The bulk of Birds Eye's discount payments went to large retailers, reflected hard bargaining in a highly competitive market place and were an unavoidable response to the bargaining power of the retailer (125) which had increased over recent years (as had discount payments to all customers as a proportion of gross sales value from 5·5 per cent in 1971 to 7·4 per cent in 1974 (127)). Birds Eye explained that, while retrospective discounts geared to sales targets were a very small proportion of gross sales value, overall basic discounts were often agreed in the light of expectations about turnover. Retrospective discounts were part of an overall bargain negotiated between supplier and retailer and would be likely if banned to continue in another form (283). However, the company was planning to introduce a new discount structure for the retail trade which would relate discounts more closely to cost savings.

16. *Ross Foods* said it had little power to influence the prices of its products because of the strength of competition and was forced to concede substantial discounts to obtain distribution (170). Discounts of up to 10 per cent based on annual turnover were offered to retail chains and Co-operative societies, and large chains also negotiated overriding discounts, often related to annual turnover and usually payable retrospectively at quarterly or annual intervals. Cost savings were largely unquantifiable and the main purpose was to ensure that Ross Foods was competitive with other suppliers (175). Practices of the other suppliers such as discounts paid for the reservation of cabinet space by a retailer and discount scales unrelated to cost savings imposed an objectionable handicap on smaller processors. To offer a discount equal in cash terms to Birds Eye's, other suppliers had to offer much larger percentage overriders since Birds Eye was normally the largest supplier to each retailer (261).

17. *Findus'* discounts, except for the few independent retailers who received discount terms and for voluntary groups where discounts were related to order size, were not directly linked to cost savings (203). The system of discounts, related to cabinet space allocation and to sales targets, was said to result from the dominance of Birds Eye in the retail market and the tendency was for discount to increase, largely as a result of the increasing bargaining power of the supermarket chains (204).

18. Since a monopoly situation had been found to exist in favour of Unilever and Birds Eye contributed about 95 per cent of its supply of reference

goods, the Commission were concerned to reach conclusions, *inter alia,* on three main aspects of Birds Eye's retail discount policy:

(*a*) differences in the discounts granted as between large and small customers;

(*b*) retrospective discounts geared to specific sales targets; and

(*c*) discounts for reserving cabinet space for the supplier's products (317).

On (*a*) the Commission considered it in general desirable that discounts should largely reflect savings in costs of distribution to individual customers but it was difficult in practice to achieve exact equivalence. The relations between order and delivery size and costs could rarely be identified with precision, particularly when a manufacturer dealt with as many products and customers as a national food manufacturer. Further, discount policy might in some circumstances be an important field of competition between suppliers. However, the disparity between discounts and cost savings had tended to grow partly because inflation had resulted in higher levels of turnover and partly because the proportion of trade accounted for by large retail customers had increased. Birds Eye had told the Commission that it was concerned about this trend which had depressed its profitability to a serious degree (319).

19. Discounts could not be wholly attributed to Birds Eye's monopoly position but were obviously intended to secure the continuing business of its more important customers whose bargaining power had increased. While the Commission felt that the public had, in general, benefited from a more efficient use of resources in retailing and lower prices, some reservations were expressed about the extent to which the discounts obtained by large retailers from their suppliers were passed on to the public and about the disparity of treatment between different retailers (320). However, the new discount structure which Birds Eye was planning to introduce would go some way towards meeting the Commission's dissatisfaction with the weak relationship between Birds Eye's discounts and cost savings and, in view of the strength of Birds Eye's position as a supplier, it was hoped that the other major suppliers would find it possible to adopt similar discount policies (322).

20. On (*b*), the Commission said that retrospective discounts geared to specific sales targets were open to objection because they encouraged retailers to concentrate their purchases on a single supplier, and this operated to the disadvantage of a supplier with a narrow range of products. Moreover, they gave an advantage to a supplier with a large market share since other suppliers would have to offer a higher percentage discount to equal the former's in money terms. Also, because discounts related to turnover, whether paid retrospectively or not, were not directly related to cost savings they might not encourage retailers to order in such a manner as to minimise the costs of distributing to them. However, the adverse effects of turnover related discounts were not as serious as those of retrospective discounts but there was no cause for interfering with the latter because they were insignificant in relation to Birds Eye's total sales and because it was proposed to phase them out under the new discount scheme (325).

21. Finally, on (*c*) the Commission considered that discounts for allocation of cabinet space were more reprehensible than discounts geared to specific sales targets because they put at a disadvantage the smaller supplier seeking to introduce his products into the retail market and because they had the effect of restricting competition between the three major suppliers.[1] The Commission recommended that Birds Eye should be debarred from giving these discounts if other major suppliers who gave them undertook to discontinue the practice (332).

**Flour and bread, HC 412 (1977)**

22. The Commission's concern with discounts to retailers of bread in this inquiry was related to their consideration of the question whether a monopoly situation within the meaning of the legislation could be said to exist because the major suppliers (none of whom individually supplied the requisite share of the market) were so conducting their affairs as to prevent or restrict competition (459), having regard especially to the uniformity or near uniformity of published retail list prices which had prevailed for many years (308).

23. It was the accepted practice of the plant bakery industry, then dominated by three big groups, to sell bread to retailers at a published retail list price less a basic allowance of 12·5 per cent. In addition, a discount might be negotiated with individual retailers. The amount of the discount depended on the competitive situation, the volume of sales involved or likely to be involved, savings in distribution costs and the necessity to keep bakery production capacity employed to the greatest extent economically possible (285). The Commission noted that the overall demand for bread had been in steady decline for several decades and that a further substantial factor had become acute in recent years, namely the growing buying power of multiple grocery groups exercised the more effectively because of the volume-sensitive nature of the plant baking industry. Multiple retailers obtained their supplies from more than one major baker and were in a position to 'drop' a supplier not prepared to do business on terms at least as favourable as those conceded by others. Given these circumstances the market was essentially one of strong buyers and weak sellers (290).

24. For a decade before 1975 discounts had been rising and by the end of 1974 discounts of up to 35 per cent off retail list prices were given to some customers (299–303). In an attempt to curb the pressures on them by

[1] The Secretary of State for Prices and Consumer Protection stated in the House of Commons on 13 December 1977 (*Official Report*, Cols 132–133) that, after discussion with the Director General of Fair Trading, Birds Eye had undertaken not to give discounts to retailers in return for a commitment to reserve cabinet space for the company's products. Similar undertakings could not be obtained from the other major suppliers, but if the granting of such discounts by them caused detriment to Birds Eye the Director General would review the undertaking given by Birds Eye. The statement added, *inter alia*, that Birds Eye had demonstrated to the Director General that it had changed its discount arrangements as foreshadowed in the report, but it would require a detailed inquiry to establish fully whether the new arrangements were likely to encourage competition and efficiency in distribution. The Minister would await the Commission's report on the general question of the relationship between cost-saving and discounts paid to retailers before considering what further modifications it might be necessary to propose in the case of discounts relating to the frozen foods industry.

retailers for progressively more attractive terms, the major bakery groups sought, before 1974, to take some form of concerted action to limit the scale of discounts and related concessions. The attempt was not notably successful, the Commission were told, because of the mutual distrust between the major bakery groups. There was also the effect of the RTP legislation on action of this character (291). However, during the period there were some 77 registrable agreements, most of limited and local effect and subsequently abandoned, particulars of which were not furnished as required by the legislation to the Office of Fair Trading until July 1975 (310). From January 1975 to December 1976 the extent of competition in discounts was substantially reduced by a provision of the Bread Subsidy Scheme 1975 (made under the Prices Act 1974) which generally limited discounts to retailers to not more than 22.5 per cent (298).

25. The Federation of Bakers told the Commission that if the statutory control of discounts (in force at the time) were to cease there would be a fierce scramble by powerful buyers for substantially higher levels of discount and that this would result in the elimination of a number of producers. Whilst it was likely that the existence of excess capacity would in any event lead to plant closures the process would be hastened if a discount war were to be resumed. The first to suffer would be its independent plant bakery members, some of whom had given the highest levels of discounts before the introduction of statutory control. The RTP legislation would inhibit the Federation from exchanging information or devising a policy to prevent a new discount war. Bakers would be forced to adopt higher published prices at the expense of small retailers and their customers, including rural housewives, who would not benefit from the higher discounts obtainable by large retailers. In effect small retailers would be giving a form of subsidy to large retailers (322–327). Similar apprehensions were expressed by the trade unions in the industry (340–346).

26. The Commission's conclusion was that, notwithstanding the registered agreements (which they were unable to consider because falling within the RTP legislation) there had been keen competition in discounts and other inducements, and thus in the net prices charged, when and to the extent that statutory provisions had not prevented this. Accordingly they did not consider that the uniformity of the three major groups' list prices for bread was evidence of, or amounted to, their so conducting their affairs as to prevent or distort competition (484).

**Cat and dog foods, HC 447 (1977)**

27. The Commission found that sales by the Pedigree Petfoods Division of Mars Ltd constituted about 50 per cent and by Spillers Ltd about 30 per cent of total sales in the United Kingdom (18).

28. *Pedigree Petfoods* operated a quantity discount system which related the price of each product to the size of the order, measured by the number of cases of all products (including non-reference products) included in the

order. The maximum discount of 6·8 per cent was allowed on orders of 600 cases or more. The case rates were based on studies carried out in 1974 and were designed to reflect the costs incurred and to yield a substantially even profit per case on orders of all sizes (54). All customers were allowed a discount of 2 per cent off the invoice price for payment within 10 days of invoice. This was more favourable than the corresponding discounts given by major competitors, but Pedigree Petfoods said that it was designed to ensure the quickest possible turn-round of cash and not in any way to match other special terms given by competitors (58).

29. *Spillers* operated a quantity discount system based on the number of cases of all products (including non-reference products) included in the order. The maximum discount, which on pet foods varied from 11·5 to 13·5 per cent according to the product, was allowed on orders of 500 cases or more (98). The following additional discounts and bonuses were also paid:

(*a*) overriding discounts to major customers with a minimum turnover of £400,000 per annum. These discounts, expressed as percentages of total turnover, were paid retrospectively at the end of the financial year on all trade in excess of an agreed figure;

(*b*) promotional bonuses to individual retailers for limited periods to enable them to feature a particular brand at a specially reduced price sometimes supported with advertising allowances;

(*c*) long-term bonuses, either on an annual or a quarterly basis, to four 'discount operators' whose policy was to maintain very low retail prices on a permanent basis rather than to make short-term special offers (99).

Spillers explained that the practice of granting overriding discounts had originated with the object of increasing overall sales. Spillers could not afford to withdraw them now because large customers had come to expect them and would suffer a loss of goodwill and sales if they were withdrawn. Though Pedigree Petfoods did not grant overriding discounts, its cash settlement terms were more generous than those granted by Spillers, and it was the total package of concessions offered to customers which mattered (199).

30. The Commission concluded that the quantity discounts granted by Pedigree Petfoods appeared to be as closely related as was practicable to savings in delivery costs; those granted by Spillers might somewhat exceed these savings (242). Spillers' overriding discounts were open to the objection that they were not directly related to savings in distribution costs and that they gave Spillers an advantage over suppliers whose production was more narrowly based. However, the granting of such discounts by Spillers was partly a reflection of the bargaining power of major customers, and the discounts (which averaged 0·7 per cent of gross sales) had not been sufficiently advantageous to Spillers to prevent the loss of market share to other suppliers. In the circumstances, it was considered that they did not operate against the public interest (243).

**Wholesale supply of petrol, Cmnd 7433 (1979)**

31. One of the practices to which the Commission were required to limit their consideration was that of 'discriminating between retailers in relation to the price at which, or the terms on which, petrol is offered or supplied to them'.

32. In 1977 the retail market was supplied by 36 wholesalers, eight of whom (including the leading oil companies) had a combined market share of 80 per cent (14). In 1964 there had been 26 wholesalers and the increase was the result of the entry of new suppliers and the more rapid rate of growth of smaller suppliers (45). The number of retail outlets had fallen from some 39,000 in 1964 to some 30,500 in 1977 (19). About 10,000, accounting for nearly one-half of the volume of retail sales, were owned by wholesalers and operated by tenants or licensees or directly employed managers (22). Of the outlets operated by independent retailers, some 18,000 (accounting for about 96 per cent of all independent sales) were tied to the wholesaler by solus supply agreements (37). The independent retailers in the higher gallonage brackets included chain retailers (the largest four of which accounted for 4 per cent of all retail sales) and supermarkets/hypermarkets (accounting for less than 1 per cent) (36). The wholesalers had closely similar basic prices for specified minimum quantities and zonal differentials related to the distance of the delivery point from refineries, importing centres or pipeline terminals (61). Scheduled prices, however, were not a reliable guide to the prices effectively paid by the retailer, being essentially regarded as the basis or starting point for negotiations between wholesaler and retailer to establish 'package deals' with individual retailers covering price, rebates and other benefits in cash or kind (70), such as loans for capital expenditure, grants for working capital, free or subsidised equipment or clothing, repair and maintenance of equipment, display or promotional material etc (71).

33. *Normal rebates and allowances* were not normally received by operators of company-owned outlets most of whom paid the full scheduled price, the rent or licence fee being the variable element for negotiation. Operators of independent sites with solus agreements usually received a negotiated rebate off the scheduled price as part of the package deal referred to above. These were related mainly to the expected volume of sales through the outlet in question, the cost of benefits other than rebates, supply costs, competition between wholesalers at the time for the business in question, the representation of the wholesaler in the area and how far he was anxious to retain or win the business and the negotiating skills of the parties. The Commission were informed that there was no set pattern in the extent to which higher volume outlets received higher rebates and that there was a wide range of preference amongst independent retailers, according to their individual financial circumstances and business ability, as to how the overall value of a deal should be spread between benefits and rebate (70–73).

34. In addition, selective retail price support (ie temporary discounts and other forms of financial assistance) was given to certain retailers in selected geographical areas. This was introduced in 1974–75 to enable retailers to

defend or recover sales volume in conditions of reduced demand and surplus of petrol throughout Western Europe leading to the 'price wars' of 1975–78, after it became possible for smaller wholesalers to import petrol at prices well below those charged by the major oil companies (49–59). The practice was to reach agreement with each retailer to whom selective support was given as to the retail price necessary to attain an agreed level of scales, the amount per gallon being related to figures of gross profit per gallon for the retailer. There were complaints that selective support favoured larger outlets against smaller ones but the wholesalers contended that, as funds for selective support were limited, they must necessarily be directed to where the wholesaler concerned considered his best interests to lie both in the short and the long term. Enquiries into the few complaints received disclosed no ground for doubting the wholesalers' contention that their selective support arrangements were not carried out in an arbitrary way (71). The wholesalers contended that normal rebates to independents had the broad effect of aligning the overall trading terms of independents with those of tenants and licensees and selective support was not intended to affect this broad alignment (80). The Commission were handicapped in their consideration of complaints that selective support favoured company-owned outlets as against independents by the small number of specific complaints which, with the consent of the complainant, they were able to put to the wholesalers concerned, but in these few cases found no evidence that selective support favoured company-owned outlets (81).

35. The Commission reached the following conclusions on these matters:

(*a*) *Normal rebates and allowances*. Although wholesalers in their negotiations had regard to the different costs of supplying different retailers, the terms granted were not strictly and systematically related to such differences and discrimination was exercised. However, it was an inevitable consequence of the settlement of terms by individual negotiation that differences in competitive situations, in the value of particular outlets to particular suppliers, in the preferences of retailers for particular suppliers and in the negotiating strength and ability of the parties should be reflected in differences between the agreements reached. The effect on competition between retailers which resulted from the negotiation of rebates and other terms was the outcome of competition between wholesalers and did not distort competition or provide a basis for a finding of a complex monopoly situation. The interests of independent retailers were safeguarded by competition between wholesalers for their business. The wholesaler had no reason for treating tenants and licensees more favourably or less than independent retailers and there was no evidence to show that preferential treatment was given in practice to one of these classes or another (127–130).

(*b*) *Selective retail price support*. In the absence of the practice, country-wide or area-wide wholesalers faced with localised low price competition would have been compelled to react by withdrawing from the market or with generalised price reduction to a lesser extent so that competition would have been less severe and larger volumes would have been imported. The effects of the practice amounted to the restriction and distortion of competition and so constituted a complex monopoly situation but, if it were to be effectively disallowed, it would be necessary for all agreements between wholesalers and retailers to be supervised and this check would have to be applied not only to the selective support but to any other benefits in cash or kind and credit terms. The administrative burden on all concerned would be unacceptably high and competition would be restricted by the need for clearance of proposed changes in agreements and the inevitable delays, while the regulation of pricing would serve to introduce rigidities into wholesale pricing and to facilitate the avoidance of price competition among wholesalers and retailers. Any disadvantages of the practice did not justify the disadvantages, risks and costs of regulation and, on balance allowing for the latter, the practice did not operate against the public interest (132–135). The Commission accepted the wholesalers' evidence that there was no intention to discriminate against independent retailers and found no evidence to support the very few complaints received. However, the Commission suggested that wholesalers should leave no doubt that their declared intentions of making no distinctions between independent and company-owned outlets in the administration of selective support schemes were in fact carried out (136).[1]

**Ice cream and water ices, Cmnd 7632 (1979)**

36. The two major groups which supplied some two-thirds of the market were Unilever Ltd and J Lyons and Company Ltd, the leading companies being T Wall and Sons (Ice Cream) Ltd (Wall's) and Glacier Foods Ltd (Glacier) respectively (393), and there were a number of smaller manufacturers whose overall share of the market had increased (395). The market was described as mainly divided into two sectors—the 'traditional' trade comprising a large number of CTN and other small shops and seasonal, mobile and entertainment outlets all over the country and the 'grocery' trade comprising grocery stores, supermarkets and freezer centres. The former concentrated on selling a wide range of individual items for immediate consumption and the latter on a limited range of dessert blocks and large packs for domestic storage (19). While there was some overlap (for example, in dessert items), traditional outlets were not subject to much direct competition from grocery outlets in meeting impulse demand (395) although the share of the latter in total sales was steadily growing due to the major changes in consumer purchasing habits represented by recourse to supermarkets and freezer centres (37). Published price lists exhibited considerable parallelism, but there was severe competition (especially in the grocery sector) in terms of net prices, particularly where discounts were negotiated with major customers (377).

[1] We received evidence from a number of major wholesalers in the course of the current inquiry to the effect that selective retail price support schemes had been discontinued with the disappearance of the intensive price competition that existed while over-supply conditions prevailed. It was asserted by those who traded with hypermarkets that the same terms were accorded as to other retailers with similar throughput. It was also stated that a system of rebates based upon cost savings (which must in fact be based on delivery costs) would be 'terminal gate plus delivery cost' pricing that would tend to result in local monopolies in the area of each petrol wholesaler's terminals, unless the wholesalers were permitted to compete with each other, similar views being attributed to wholesalers in the Petrol report (67). For other views on petrol distribution see Appendix 15, paragraphs 4–7.

37. In the traditional sector discounts largely took the form of annual retrospective bonus payments usually linked to long-term exclusive supply agreements and expressed in standard published scales with higher rates for customers who installed their own refrigeration than for those using refrigeration installed by the supplier (115, 199). The major suppliers explained that discounts based on order quantity or drop size were essentially unsuited to the ice cream trade. Experience had shown that retailers, especially smaller retailers, would tend to defer placing orders so as to build up quantities qualifying for larger discounts and put on pressure for bigger supplementary deliveries at the very time when a change in the weather created a similar demand from all quarters. An annual bonus system enabled small dealers to keep their cabinets adequately stocked by regular delivery without suffering financial disadvantage from ordering in comparatively small quantities while the manufacturer's net price could be more closely related to unit costs over the year notwithstanding the different out-turn in good and bad weather periods (337, 379–380).

38. The Commission reached the conclusion that, given the perishable nature of the product and the influence of fluctuating weather conditions on demand, this type of payment provided an effective incentive for small retail outlets to maintain adequate stocks; that discounts based on drop size might not be desirable for small outlets in view of their lack of substantial storage space and the need to maintain the level of stocks with a smooth flow of distribution; and that under the current arrangements for long-term supply contracts, an annual retrospective bonus system was unlikely to constitute much of an additional tie (418). The Commission recommended, however, that contracts should be made for not more than a year's duration and that the bonus period should end at the same time as the annual contract or that payments should be at one flat rate (419). The requirement for exclusive supply to outlets (as distinct from exclusive use for the supplier's products of a refrigerated cabinet provided by the latter) was found to operate against the public interest (429).

39. As regards the grocery sector and certain other users (for example, wholesalers or caterers), the major suppliers operated standard discount scales of some complexity for the several different categories of customer but more favourable terms, sometimes involving bonus and overrider payments, were individually negotiated with major multiples in these fields, as well as with the larger multiples which operated in the CTN and entertainment business (116–188, 200–203). Discounts were said to be tending to increase as a proportion of turnover year by year due amongst other factors to intense competitive pressure, the bargaining power exerted by multiple groups and, as regards grocery sales, the ability of smaller ice cream manufacturers to supply the products in demand. Other factors affecting discount terms were said to include the extent to which the customer provided his own refrigerated storage, the opportunities for bulk delivery, the number of stores or sites supplied and the type of outlet and product involved but net prices were strongly influenced by competitive pressures and bargaining strength (200–202).

40. Wall's told the Commission that large customers such as grocery multiples were able to use their bargaining power to extract larger discounts than Wall's would have wished to give but, since unit costs were highly sensitive to volume fluctuations (three-fifths of costs being fixed), the company had to consider the overall effect on its overhead costs of supplying all other customers, including small customers, should a significant part of turnover with a large customer be lost. However, the competitive nature of the ice cream industry did not permit Wall's to recoup concessions to some customers by passing the burden on to others (for example, smaller retailers) and it would, in any case, be particularly undesirable to take any action that would weaken the 'traditional' trade which remained an exceptionally important outlet for a wide range of its products by rendering that trade or the products it sold less competitive. Discounts granted to very large customers, however, were substantially passed on to the consumer and the overall effect of Wall's discount structure was to lower rather than raise price levels to the consumer (337–338).

41. Glacier explained that the company could not afford a considerable increase in unit costs of manufacture by losing volume sales from outlets such as the larger supermarkets, cash-and-carry and freezer centre multiples. Many of the special deals (while 'loss making' on a full cost basis) made a reasonable contribution to fixed overheads and profit, failure to gain which would have resulted in upward pressure on prices to other customers from whom it would be otherwise necessary to seek a greater contribution to fixed overheads and profit. The business exhibited features common to nearly all those supplying the retail grocery trade and facing substantial competition, namely that large discounts exacted by the bargaining strength of powerful retail concerns depressed overall profitability, produced wide variations between rates of profit on sales to different categories of trader and must mean that sales at the highest rates of discount were profitable in many cases only on a 'contribution' basis (387–388).

42. The Commission concluded that in the grocery sector competition appeared to be strong, stimulated by the pressure of large price-conscious buyers. They noted that Wall's and Glacier acknowledged that in charging lower prices, often in the form of discounts, to their large customers especially in the grocery sector they took into account not merely the lower costs of supplying such customers but also the contribution of the sales to the general profitability of their business. The Commission found no reason to believe that either company had adopted a policy of predatory pricing to try to drive other manufacturers out of the grocery market (396–397).

**Domestic gas appliances, HC 703 (1980)**

43. The reference was concerned with the supply of gas cookers, space heaters and instantaneous water heaters. The Commission found that Thorn Gas Appliances Limited supplied over 40 per cent of the market for the first of these items and 52 per cent of the market for the third, while Chaffoteaux Limited supplied 26 per cent of the market for the third (13.3–13.6). The Commission found that a monopoly situation existed in favour of these companies in relation to the supply of the items specified (13.8).

44. Altogether ten British manufacturers supplied the market for reference goods in 1978 (2.9). The Commission found that a complex monopoly situation relating to the supply of each class of reference goods existed in favour of all suppliers who were members of the Society of British Gas Industries or the Gas Stove Makers' Panel since they so conducted their respective affairs as to restrict or distort competition, by virtue of discussions between them relating to the levels of differential between prices charged to the British Gas Corporation (BGC) and those charged to other retailers and of certain other matters (13.16).

45. The Commission found that a monopoly situation existed in favour of BGC which supplied over 90 per cent of the number of reference goods sold by retail (13.8). It had provided a valuable nation wide retail and advice service and ensured that the supply of gas was safe but the public was losing the benefit of competition and the longer-term efficiency and viability of the appliance industry was threatened (13.84).

46. The Commission considered that BGC exercised excessive control over the conduct and performance of the manufacturers who were unduly subservient to BGC in that their designs gave undue weight to BGC's views of marketability and they accorded delivery and price preference to BGC. The level of dependence into which the appliance manufacturers had fallen restricted competition between manufacturers by reducing incentives to improve efficiency and investment and contributed to the industry's poor export performance (13.76). BGC had usually accepted manufacturers' own assessment of costs and had not exercised its buying power to the maximum so there had only been limited competition between manufacturers (13.25) who had, for most of the time, been reluctant to do anything that would disturb their easy relationship with BGC (13.29).

47. The Commission found that BGC's domination of the retailing of these appliances had also had the effect of restricting competition in retailing. It had successfully insisted that manufacturers should increase price differentials in its favour and grant delivery preference, and retailers other than BGC had been denied the right to stock many up-to-date models. As a result of this, and the occasions when BGC had cut prices to meet or beat retail competition which it saw as a threat to its own position, smaller retailers had found themselves unable to compete. The effect had been to limit the number of independent outlets supplying gas appliances and thereby to suppress competition, reduce consumer choice and possibly increase the price of appliances (13.77).

48. The Commission did not doubt the value of the special services BGC offered to the industry, notably in technical services, market research and promotions, but considered that they should be recompensed by specific payment to the BGC which would fall to be recovered, like other overheads, by the adjustment of prices charged to all customers for the models which benefited from them, as far as competition allowed, not by price differentials which restricted and distorted competition between BGC and other retailers (13.61).

49. The Commission recommended the adoption of one or two courses to improve the present position. The more radical course was that the BGC should cease to undertake retailing functions which would be left exclusively to the private sector (13.88). The less radical course was a modification of BGC's accounting and other procedures with a view to reducing its power in the retailing sector and thereby its influence over manufacturers (13.101). New and more precise requirements should be designed to ensure, amongst other things, that there was no discrimination between prices charged to the BGC and other retailers, apart from economically justified differentials, and that there were no exclusive selling deals or special discounts so long as the BGC retained anything like its market dominance (13.102). To this end appropriate instructions should be imposed alike on the manufacturers found to be participants in the complex monopoly and the BGC, including a requirement not to supply or purchase appliances at prices lower than those at which those appliances were offered to other traders taking delivery of similarly sized loads (Appendix N). Two members expressed a preference for the less radical proposal (13.112–13.130).

APPENDIX 4

*(referred to in paragraphs 4.2, 6.28, 6.30, 7.4, 8.25, 9.5, 9.25)*

## Reports of the Price Commission referring to the practice

1. A number of reports of the Price Commission under the Price Commission Act 1977 contain information and comment of interest in relation to the practice. This is summarised below. Paragraphs 4–12 are concerned with reports on investigations into prices of individual companies under Section 4 or 5 of the Act. Paragraphs 13-30 are concerned with reports into prices, costs and margins in particular sectors under section 11 of the Act and one earlier report. The numbers in brackets are to paragraphs of the reports.

2. The reports were primarily concerned with matters other than the practice but it is to such references as are made to the latter that the following summaries are mainly confined. Our attention was specifically drawn, as respects our own inquiry, to the reports on United Biscuits (UK) Ltd, Floor and Furniture Polishes and Children's Toys and Games in view of the references to discounts and to the reference to loyalty discounts in the report on Compound Feeding Stuffs (which did not involve sales to retailers).

3. Some of the companies with which Price Commission reports were concerned also provided us with information for the purposes of our inquiry but we are not to be taken as necessarily endorsing the specific comments on their particular practices made by the Price Commission since we were not concerned to reach detailed conclusions on the merits of the particular instances. We recognise that there may have been subsequent changes in the practices of some of the companies investigated by the Price Commission.

**Tate and Lyle Refineries Ltd—Sugar and syrup products, HC 224 (1978)**

4. Both the company and the British Sugar Corporation had similar systems of uniform delivered list prices subject to discounts which were of two kinds: published discounts based only on the volume of sugar delivered and additional special discounts negotiated directly with the larger customers in both the industrial and retail markets (4.10). As regards the latter, discounts were negotiated with large companies, 16 of whom represented 84 per cent of the company's sales to the retail market. Factors affecting the size of these discounts included total tonnage purchases, potential for growth, percentage of specialities to total tonnage, average drop size and geographical spread (4.14). Overall nearly 90 per cent of total sales were subject to negotiated discounts. To the extent that they took into account the actual cost of distribution they offset the cross-subsidisation effects of the uniform delivered pricing system but because they were individually negotiated the Commission thought they might inhibit general competition (4.15).

**The Ever Ready Company (Great Britain) Limited—Dry (Primary) Batteries, HC 284 (1978)**[1]

5. The company estimated that it had a 69 per cent share of the total dry battery market in the United Kingdom. It operated an aggregate discount structure under which the discount rose with the volume of batteries and other products taken in a year but which gave a major advantage (illustrated by a 15 per cent differential) to large distributors and bore very little relationship to differences in distribution costs (3.33). The aggregate discounts, together with the policy of making the company's comprehensive range regularly available, offered strong incentives to retailers to purchase all their batteries from Ever Ready, even where part of the product range was available more cheaply from another source (2.7). Generally the higher discounts to large customers were taken in wider retail margins rather than being passed on to the consumer, since a very high proportion of retailers stocking Ever Ready batteries followed recommended prices (2.10). The Commission considered it desirable in these circumstances that the company should bring its discount structure into closer relationship with differences in cost (3.34).

**Cadbury Schweppes Foods Ltd—Grocery products, HC 293 (1978)**

6. List prices for retail customers declined with increasing size of order (5.8). In addition to discounts for bulk, there were overriding discounts (ie discounts related to the total annual purchases by a trade customer); and customers were divided into categories and targets were set for annual sales within each category and special discounts earned by achieving them (5.9). The third element which affected prices comprised consumer promotions and trade bonuses which were paid to the retailer and might take the form of price reductions or free stock. They were intended to recompense for promotional effort and the company attempted to negotiate volume-related promotions where the retailer also contributed part of his own margins to give price reductions to the final consumer (5.10). The Commission suggested that a widespread system of special discounts, because of its selective nature, might inhibit general competition (Summary 12). They believed that the system of overriding discounts commonly used in the food manufacturing industry was often not demonstrably related to cost savings and consequently in certain circumstances might tie a customer to the retailer (5.12) and distort competition. The Commission would welcome a review of such systems with a view to remedying this defect (3(*a*)). Trade bonuses did not appear to relate to cost savings and had a potential to favour larger customers; their replacement with discounts which reflected cost savings and were non-discretionary should be considered (3(*b*)). These recommendations were addressed to the company and the food manufacturing industry, it being recognised that since discount and bonus schemes were of general application throughout the trade it would be difficult for any single company to act unilaterally (5.14).

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[1] For report of Monopolies and Mergers Commission on Primary Batteries see Appendix 3, paragraphs 6–8.

**Allied Breweries (UK) Limited—Brewing and wholesaling of beer and sales in managed houses, HC 415 (1978)**

7. Discounts were an important element in the way in which the company differentiated between its markets, one of which was the free off-licence trade (the take-home trade) which included specialist off-licence stores, supermarkets and non-specialist shops selling alcoholic beverages (3.28–29). Because of their purchasing power the company was offering some of its larger off-licence customers discounts well beyond a level which could be fully justified on cost grounds alone. A study by the Commission showed that the company made a net loss on this business on the basis of a full, but to an appreciable extent arbitrary, allocation of overheads, while the company had demonstrated that the business made a marginal contribution before overheads were taken into account which, in its view, benefited all customers (2.27). For the small customer the discount might underestimate the additional costs incurred in delivering small orders, so that it appeared that customers who either did not receive discounts or who did, but took medium-sized consignments of canned and bottled beers, were subsidising customers taking both large and small consignments (2.28).

**Imperial Tobacco Ltd—Cigarettes and Cigarillos, HC 28 (1978)**

8. The company operated a delivered price system with the standard terms offering discounts according to size of drop (3.18). Although it offered minor incentives to all types of trader it did not offer overriding discounts to large customers (3.20). All companies had been negotiating matched deals with retailers (whereby the manufacturer offered the distributor a discount ranging from 1p to 3p off a packet of 20 cigarettes provided that the distributor was prepared to match the discount out of his own margin and sell to the customer at 2p to 6p off the recommended retail price) (3.13). This enhancement of competition by substantial price reductions from realistic recommended prices had been of considerable benefit to the consumer (6.4).

**Thermos Limited—Vacuum ware, HC 135 (1979)**

9. The company's share of the United Kingdom market had risen to 70 per cent (2.8). The standard retailer's margin was 25 per cent off the suggested retail price list (3.5). Additional discounts from the basic trade price depended on whether the customer was a wholesaler, multiple or independent retailer and the size of the individual order. Some 9 out of 10 of trade customers bought at the maximum volume-related discount of 22·5 per cent off the basic trade price, which represented the company's normal best terms (3.6). Special product promotions represented less than 2 per cent of the company's United Kingdom turnover in 1977. With the higher order quantities arising from such promotions, both the company and selected trade customers accepted lower margins and prices to consumers were accordingly reduced for specified periods (3.8). Volume-related discounts and promotional terms offered by different manufacturers generally followed a standard pattern. From time to time additional discounts of various types might be offered by individual manufacturers in an attempt to increase or maintain their market shares but the degree of trade price competition was limited (3.11).

**United Biscuits (UK) Ltd—Biscuits, crisps, nuts and savoury snacks, HC 347 (1979)**

10. The company published a price list showing the basic price per case from which discounts were calculated. Smaller retail customers received discounts based on size of individual deliveries intended to reflect savings in unit costs of distribution as drop sizes increased (3.6). For larger customers an internal scale of discount guidelines was used to negotiate net buying terms reflecting, in the company's view, the high proportion of fixed costs and the contribution each customer made to them, as well as the importance of and the need to retain large accounts which were a significant proportion of total business (3.5). These discounts were related to total branded biscuit sales in the form of a standard discount based on sales volume in the preceding year and a target or performance-related discount graduated according to the percentage increase in sales over those in the preceding year (3.7). In common with many others selling to the grocery trade, the company gave additional forms of discounts and allowances to help retailers finance promotional price offers and in-store and other advertising (3.9). Total discounts and allowances had increased as a percentage of turnover from 10·97 per cent in 1975 to 13·61 per cent in 1978, trade promotion and advertising allowances showing the greatest growth (3.9).

11. In the company's view, it was not feasible to measure precisely the differences in the total costs of supplying customers with different volumes and varying service requirements but the order of magnitude of average selling and distribution costs as a function of delivery size could be identified and the turnover-related discount structure was broadly equitable as between customers (3.11). The Commission recognised the practical difficulties of identifying or reflecting in the price structure the different level of costs incurred in supplying a frequently purchased product to a very large number of retailers all over the country (3.12). There was no evidence that, in its discounts and allowances over recent years, the company unfairly discriminated in favour of larger customers at the expense of medium-sized and smaller retailers (3.10). Nor did the company grant more generous terms to its 'own label' customers than to purchasers of branded biscuits when account was taken of relevant cost factors (3.18).

12. However, discounts and promotional allowances had become more important in recent years as part of the competitive environment embracing both retailers and manufacturers and the Commission was concerned with the effect on competition and efficiency of those given by the company (3.12) when used by firms with strong positions in their markets (3.16). The combined standard and target discounts offered a powerful commercial inducement to retailers to concentrate their business on the company's products. Being based on annual sales they discouraged retailers from splitting purchases and therefore were a barrier to competition and new entrants; to the extent that they did not adequately reflect cost differences, they could distort the process through which business was gained by the most efficient producers. Such discounts were common in the biscuit market but the company had a commanding position in the market and was able by its conduct to influence the form

and degree of competition (3.16). The Commission considered there were strong grounds for the company to reconsider its discount policy (Recommendations 6).

**Decorative Paint (1978)**[1]

13. About half of decorative paint was bought by the general public primarily through retail outlets and the remainder was used on jobbing or contract work. The distributive sector was undergoing an irreversible structural change (Summary). The wholesaler share was shrinking owing to the increasing sale of paint directly by manufacturers to retailers, together with a variety of discounts (2.6 and 4.1). The role of the small specialist retailer was being undermined by supermarkets, DIY stores and other large retailers, a few large specialist groups having grown very quickly (Summary). The main feature of the decorative paint trade was the remarkable spread of retail prices, even for the identical brand of paint (6.2).

14. Wholesalers' selling prices differed enormously because of the variety of their customers and of the discounts these customers were given (4.3). Most independent wholesalers, and one of the two large wholesalers owned by manufacturers, issued notional retail price lists, discounts allowed by wholesalers on this ranging from 20 per cent to over 60 per cent (6.7). A number of wholesalers had abandoned notional retail lists in favour of net pricing in such forms as a single published price list from which no discounts were allowed or differential lists according to the annual value of the customer's business (6.8).

15. Most manufacturers published price lists ('merchant price lists') from which discounts were given. For similar paints merchant price lists varied but it was found that after all the discounts given had been taken into account the net prices charged were very much the same (7.4). Retailers paid less for their supplies if they bought direct from manufacturers. Large retailers negotiated fixed prices for the duration of a contract for direct delivery, with given discounts where deliveries are made in bulk to a central depot. Other retailers obtained discounts from merchant list prices calculated according to volume purchased and method of payment. Very large retailers obtained discounts from manufacturers of 35 to 45 per cent compared with the average of 15 to 25 per cent for direct supply. An index of retailers' purchase costs at May 1977 for decorative paints related to 100 showed specialists at 96, department and variety stores 105, food supermarkets 103, DIY supermarkets 97 and traditional hardware and small DIY shops at 107 (6.6).

16. The Commission considered that it might well lead to a more orderly pricing structure if more were to follow the example of a leading manufacturer who had introduced net pricing and were to publish scales of net prices charged to both wholesalers and retailers with differences relating only to volume purchased (7.4). Manufacturers were recommended to discontinue the

[1] This investigation (of prices and margins for decorative paint) was made under paragraph 2(1) of Schedule 1 to the Counter-Inflation Act 1973.

system of merchant price list less discount in favour of net pricing and wholesalers to end the practice of issuing notional retail list prices (7.9).

**The Pricing of Beds, HC 650 (1978)**

17. Beds were normally sold direct from manufacturer to retailer (5.1). 'Own-branding' of beds was comparatively unimportant but exclusive label beds only available through one shop or group of shops were an important feature (5.15). The widespread practice of using recommended retail prices to form the basis of 'double pricing' at the retail level was detrimental to the interests of the consumer due to misleading price comparisons (9.21). Recommended retail prices were generally calculated by the application of a mark-up to the trade list price but these mark-ups could not be taken at face value since some manufacturers allowed retailers substantial reductions from the trade list price (6.9). The Commission considered that this could have the effect of inflating recommended prices to an artificially high level as did the practice of using a larger than usual basic mark-up (9.1).

18. Some of the larger manufacturers had evolved a 'very flexible' attitude to the negotiation of special deals with retailers usually individually negotiated on the basis of the manufacturer's assessment of the 'quality' of the account. Types of discount and allowances sometimes given included advertising or promotional allowances, quantity discounts, overriders, loyalty discounts, extended credit (6.14–15). With one exception all manufacturers in a sample had schemes for giving retrospective discounts which either gave a small percentage discount on all purchases if the toal value exceeded a certain level or gave a larger percentage on all purchases above a certain threshold (6.16). Another widely used discount was that given to 'approved' stockists who agreed to display a range of a particular manufacturer's models and in return were allowed a discount of from 5 to 45 per cent off the normal trade list price (6.9).

**Prices, costs and margins in the production and distribution of toothpaste, HC 125 (1978)**

19. In making its examination the Price Commission was not required to take into account any company other than Beecham Proprietaries Limited, Elida Gibbs Limited, Colgate Palmolive Limited and Procter and Gamble Limited.

20. All the companies issued a trade price list and, with one exception where the published terms were one price ('best terms') applicable to all customers, offered quantity discounts mainly reflecting the relative costs of different deliveries (5.53). Also two companies had a permanent arrangement with two large retailers whereby the latter got additional reductions from trade prices. These were said, in one case, to be a specific recognition of the exceptional importance of the retailers to the business and a reflection of cost savings thereby resulting and, in the other, to be founded on the economies of the retailers' large volumes and extensive centrally organised distribution network and to make a major contribution to the efficient utilisation of fixed overheads

(5.54). The same two manufacturers had arrangements with several other large retailers whereby the latter earned special discounts for reaching a turnover target in a given period. These were said, in one case, to be related to the cost savings implicit in the nature and scale of the retailers and were required to result in profitable business and, in the other, to constitute an effective business building mechanism and thus contribute to the efficient utilisation of fixed overheads (5.55). Certain forms of promotion (payments for guaranteed distribution, special off-shelf displays, reduced trade margins, retailer's advertising, guarantees not to sell at above a special low price etc) were negotiated individually (5.56).

21. The Commission sought to answer the question whether these various trading terms unduly favoured some sectors of retailing at the expense of others since it could be anti-competitive if the manufacturers obtained a disproportionate share of profits from certain groups of retailers. It was not possible fully to explore this complex issue but it seemed unlikely that two of the companies, which had clearly defined published terms containing no obvious anti-competitive features, did discriminate. In the other two cases the position was less clear. Annual sales targets with penalties might make it difficult for other manufacturers to compete for marginal business and the negotiation of terms not generally available to other retailers might possibly result in prices to those with buying power which did not reflect genuine cost savings (5.63).

22. Generally it was concluded that the discounts, rebates and other special terms individually negotiated between manufacturers and retailers did not result in an undue competitive advantage to the latter but certain aspects of the current discount arrangements of at least two of the manufacturers were not generally known to all buyers, and this left open the possibility that such an undue advantage might arise. Although companies might feel that such trends had been forced on them by the growing buying power of retail chains, the Commission thought they should examine their practices carefully so as to ensure that all customers were treated in terms which did not have the potential to distort competition (6.19).

**Prices, costs and margins in the manufacture and distribution of portable electric tools, HC 204 (1979)**

23. The tools concerned were supplied predominantly for DIY purposes (excluding industrial and tradesmen's tools) and Black and Decker Ltd had 90 per cent of the United Kingdom market as a whole (7.7). The increasing popularity of DIY activities had resulted in an increase in the share of sales through multiple retail outlets and a decline in that of independent retailers (tool and DIY specialists and hardware shops) to 20 per cent in 1978 (5.1). The changes in the pattern of distribution had led to wide disparities in retail prices between the large multiples and small independent retailers (6.12).

24. Over and above the standard discount (virtually all customers received best terms of 38 per cent apart from mail order companies which traditionally enjoyed an addition), extra discounts were offered to direct retailers according

to various market factors such as stock levels and the need to strengthen business with certain companies and to increase sales in particular areas. An examination of the budget available for extra discounts showed that it was distributed equitably as between different types of outlet (2.21). Special deals were arranged to give independent retailers an opportunity to compete with large multiples (2.22). These deals were not directly cost-related but support of the higher cost independent trade was justified by the company because of the danger of concentrating distribution in the hands of a few large direct retailers. The multiples tended to stock only the fast moving items whereas the main independent retailers were encouraged to stock a full range and play an important part in establishing the market for new products before the large multiples began purchasing in large quantities (2.23).

**Prices, costs and margins in the manufacture of floor and furniture polishes, HC 13 (1979)**

25. Johnson Wax Ltd and Reckitt and Colman Products Ltd held about 80 per cent of the market. There was competition within the duopoly from the innovation of new products, in marketing and by the maintenance of brands (6.3). There was price competition from Domestic Fillers Ltd, E R Howard Ltd, and others (6.4). Sales of the products and many similar household products had become increasingly concentrated in the grocery sector of the retail trade with a growing proportion sold through the large multiple chains. In 1978 one-third was distributed through multiple grocers and a similar proportion through other grocers, half of the remainder through other non-grocery multiples and half through hardware/furniture shops (2.16).

26. Most promotional expenditure directly benefited the consumer and much of it was channelled through outlets in a non-discriminatory manner. It amounted to 7·0 and 15·8 per cent of gross sales for the two major companies (advertising expenditure being 13·2 and 23·6), other product-related discounts being 2·5 and 1·8 (4.2).

27. Both major companies published list prices and operated a system of special buying prices or case discounts on a contractual basis to specific customers on specific products which were mostly not cost-related and were discriminatory in their application (4.11). The Commission considered that this practice (and the element in promotional expenditure which was discriminatory) was disadvantageous to small traders and manufacturers should move towards allocating discounts and promotions in a non-discriminatory manner so that discounts should be related either to cost savings or to published volumes of offtake (6.9).

28. The four companies mentioned above all operated systems of long-term retroactive agreements or overriding discounts, mainly to multiple stores, by which a small discount (less than 3 per cent) on total sales of all products was paid each year provided a sales target had been achieved. These covered 1·6, 30, 32, 46 per cent of sales respectively (4.12). Although not large they tended to discriminate further against the small retailer and also discouraged the recipients from changing suppliers because they would lose money through

not reaching sales targets. Accordingly the Commission thought they should not be increased in percentage terms per account (6.10).

**Prices, costs and margins in the manufacture and distribution of children's toys and games, Cmnd 7651 (1979)**

29. The industry was very complex and fragmented with some large and many small firms in both manufacturing and distribution (1). There appeared to be no significant barriers to entry in any part of the trade (5) and there was a substantial degree of competition in all sectors of the market. Home manufacturers faced significant competition from imports. The share of the market gained by multiple retailers and mail order companies had risen at the expense of specialist retailers (24). Wholesalers were coming under severe competitive pressure from the tendency of large manufacturers to deliver direct to retailers, for retail sales to shift to large multiples who did not buy from wholesalers and for retailers to import directly (4.11). Multiple retailers and mail order companies tended to stock only the more popular products and concentrate their sales at the Christmas period when competition was strongest between these types of outlet and small specialist retailers (4.14). A continuation of their upward trend in market share might lead to a reduction in the total number of outlets selling toys and games and to a reduced choice to the consumer (6.12).

30. Multiples were also able to obtain from manufacturers considerable discounts from trade prices. The ability to negotiate such discounts was enhanced by the fact that the multiples could obtain supplies either from manufacturers, importers or wholesalers or by directly importing (4.12). Small specialists tended to carry a wider range of stock all the year round in comparison with other retailers but because of lower volumes they were generally unable to obtain the discounts enjoyed by multiples and mail order companies and had difficulty in meeting the competition from other retailers at peak times (4.15). Their relative share had declined in spite of increased activity of buying groups allowing more favourable discounts for small specialist retailers to be obtained from placing larger orders with manufacturers (4.16).

31. Discounts allowed by large manufacturers to large retailers were generally of the same order as discounts to wholesalers, while those to mail order companies might be higher. Besides large volume, the justification often given was that such customers purchased early in the season and were prompt payers but there was no evidence to suggest that the discounts could be wholly justified by manufacturers' cost savings (3.9). The discounts were negotiated from a position of increased buying power by the multiples and the manufacturers were being subjected to a squeezing of margins (6.11). Some manufacturers allowed discounts retrospectively based on total annual purchases. While annual volume discounts might be considered anti-competitive if they encouraged undue loyalty to a particular manufacturer, in this very seasonal trade they removed the incentive customers might otherwise have to place all their orders at one time and this was helpful to manufacturers (3.9).

32. Wholesalers had less price setting freedom since they operated within a well established trade structure where manufacturers and importers often published trade price lists. Extra discounts were said to be negotiable depending on size of purchase, status of customer and in some cases total annual sales to customer (3.13). Discounts allowed by some wholesalers for large orders reflected the competitive pressure of discounts granted by manufacturers to the multiple retailers (3.14).

33. On some toys and games the consumer might benefit from higher discounts in the form of lower price. However, the higher gross margin of some large non-specialist retailers and the results of a price survey together suggested to the Commission that the full benefit of the discounts they received was not passed on to the consumer. Smaller manufacturers, if unable to meet the promotional and volume requirements of the large multiples, were likely to be faced with a shrinkage in the number of outlets for their products and entry into manufacturing might become more difficult (6.12).

**Prices, costs and margins in the production and distribution of compound feeding stuff for cattle, pigs and poultry, HC 338 (1978)**

34. Amongst other arrangements described, in return for agreeing to take at least 70 per cent of their annual compound from BOCM Silcock Ltd (BOCMS), main dealers paid less than the list price on a pre-arranged scale. Loyalty in excess of 70 per cent was also rewarded with higher levels of discount (2.29). A discount for loyalty was not cost-related. A dealer with small requirements could earn the discount by undertaking to buy only or predominantly from BOCMS while another dealer placing much larger orders regularly with BOCMS, and thereby providing greater opportunities for cost saving, was denied a similar discount because he also bought from another supplier. The Commission could not accept this as a principle on which to base a discount structure in view of BOCMS' leading position in the market. Such loyalty discounts had an anti-competitive effect and should be replaced with cost-related discounts (2.30).

APPENDIX 5

*(referred to in paragraphs 4.3, 4.4, 5.3, 7.4)*

## Product surveys

## Summaries of replies to questionnaires

1. In January 1978 a questionnaire was sent to 151 companies listed in current trade directories as manufacturers of the following products:

Paper handkerchiefs
Dentifrice
Baked beans
Ladies fine-gauge hosiery

2. In July 1978 a revised questionnaire was sent to a further 226 manufacturers listed as suppliers of the following products:

Bread
Flour confectionery
Biscuits
Canned beer
Cigarettes
Decorative paint
Domestic refrigerators

3. In April 1979, a supplementary questionnaire was sent to certain manufacturers who had already replied either to the first or the second questionnaire, seeking further information about the terms on which they sold to wholesalers.

4. Examples of the first and second questionnaires are reproduced as Annex A and Annex B respectively. The replies, save as they related to manufacturers' cost studies,[1] are summarised below.

5. Much of the information supplied in response to our questionnaires was of a commercially sensitive nature and we do not therefore give the names of the companies supplying it.

**First questionnaire**

6. The following table shows the number of manufacturers of each product to whom the questionnaire was sent, the number who replied, total sales of each product in 1976[2] by those who replied to the questionnaire and the estimated total market share represented by these sales.

[1] Information about manufacturers' cost studies obtained from these product surveys and from subsequent discussion with some of the respondents to the two questionnaires is dealt with in Appendix 8.

[2] Calendar year or nearest financial year.

TABLE 1

| Product | Number of manufacturers who received questionnaire B | replied to questionnaire C | Sales by C in 1976 D | Estimated market share E |
|---|---|---|---|---|
| | No. | No. | £m | per cent |
| Paper handkerchiefs | 11 | 3 | 27·2 | 80 |
| Dentifrice | 17 | 7 | 30·6 | 81 |
| Baked beans | 16 | 3 | 64·3 | 90 |
| Ladies fine-gauge hosiery | 108 | 11 | 60·4 | 75 |

Manufacturers who did not reply to the questionnaire included some who:

(*a*) did not supply the product;

(*b*) supplied only insignificant quantities;

(*c*) did not sell to retailers; or

(*d*) had ceased trading or been taken over.

In the case of ladies fine-gauge hosiery, it was agreed with the trade association that, in view of the large number of very small suppliers in the industry, those below a certain size would not be expected to reply.

7. Other products supplied by the companies concerned, and their total sales in 1976, were:

TABLE 2

| | Other products | Total sales by the companies concerned in 1976 £m |
|---|---|---|
| Paper handkerchiefs | Kitchen towels, toilet tissues, sanitary towels and other paper products | 121·9 |
| Dentifrice | Pharmaceuticals, toilet preparations, soap and household detergents | 238·6 |
| Baked beans | Baby foods, canned foods, pickles and vinegar, ketchups and sauces, salad cream, instant coffee and preserves | 393·0 |
| Ladies fine-gauge hosiery | Ladies' underwear, childrens' tights, casual footwear, ladies' socks and yarn | 67·1 |

(*a*) *Paper handkerchiefs*

8. All companies issued trade lists in which the price per case was related to the number of cases of all products included in the order. Discounts were allowed for quantities in excess of 100 cases, ranging up to some 6 per cent for 800 cases or more. One company said that the discount for larger quantities was based on cost saving from (*a*) bulk deliveries direct from the mills as opposed to smaller deliveries via depots, and (*b*) improved vehicle utilisation. The other companies said that the discount allowed was not based on cost savings but on customers' potential annual volume and competitive pressures in the market place.

9. The minimum quantity delivered was usually 25 cases (costing approximately £150) but exceptions were allowed in favour of retail chemists and multiples who might have direct deliveries of 10 cases to individual branches.

10. The price lists did not include recommended retail prices. Guidance on retail prices was not generally given except in connection with consumer promotions (see paragraph 12).

11. All companies gave special terms to some of their larger customers outside the terms contained in their price lists. These usually took the form of specially negotiated deductions from the invoice price or of annual retrospective payments by the company, normally conditional upon the achievement of sales targets. One company said that in calculating special terms account was taken of delivery sizes and sales and service costs, while the others said that market factors and the profitability of the individual account were the only relevant considerations.

12. Promotions, which might involve special price reductions and contributions to retailers' advertising, were organised, and the terms of such promotions might be more favourable to some retailers than to others. A promotion scheme would often involve an understanding as to the prices at which products would be sold, but the final decision rested with the retailer. One company gave a special discount to selected customers in lieu of normal promotional support, to conform to their policies of permanent low prices.

13. 'Own label' sales by the three companies that replied amounted together to about 27·5 per cent of their total sales in 1976, but the individual percentages varied considerably.

(*b*) *Dentrifice*

14. All companies issued trade price lists. Only two gave quantity discounts (in one case 15 per cent on orders of 150 cases or more). Another company gave a delivery discount on orders for 175 cases or more and imposed a delivery charge on orders for less than 25 cases, while yet another allowed a 10 per cent discount on orders of £45 and over. The companies that gave quantity discounts said that they reflected the lower cost of processing and delivering larger orders but one said that they did not fully reflect the cost savings achieved.

15. Most companies imposed a minimum delivery quantity varying from five cases (costing approximately £33) to 15 cases.

16. All companies included recommended retail prices in their price lists.

17. Three companies said that they did not negotiate any special terms outside those contained in their price lists, other than for special promotion schemes (see paragraph 18). The rest gave special terms in the form of additional discounts off the invoice price to certain very large customers and annual or periodic rebates, usually conditional upon the achievement of sales targets, to other important accounts. The reasons given for conceding special

terms included the lower costs of selling and delivery to large retail chains with their own centrally organised distribution network, and the need to retain and develop sales to important customers.

18. Promotional support given to retailers included special prices, advertising contributions and a wide variety of other arrangements involving special discounts or lump sum payments to secure participation of retailers in promotions. There was usually no formal arrangement about resale prices.

19. Very few 'own label' sales were reported, except for one company which manufactured almost exclusively for sales through its own retail shops.

(*c*) *Baked beans*

20. All companies issued trade price lists which included quantity discounts depending upon the number of cases of all products covered by the order. The maximum discount allowed generally varied between 8 and 10 per cent, for (usually) 1,000 cases and over, though one company allowed up to 13 per cent on certain products other than baked beans. Another company explained that the vast majority of its sales were at best terms; it was only in exceptional circumstances where the account was very small and order quantities for delivery to one address were very close to the minimum that a price in excess of best terms was charged to compensate for the extra cost of servicing the lower volume.

21. The basis of the quantity discounts allowed was explained in various ways, the principal factors mentioned being:

(*a*) cost savings, mainly related to the cost of order assembly in the warehouse and delivery costs of various order sizes;

(*b*) historical trade practices;

(*c*) the competitive situation; and

(*d*) the advantage to the manufacturers of individual branch calling for their salesmen and resultant branch delivery of goods, which was held to justify the offer of better terms in return for this facility.

22. The minimum quantity delivered ranged from 15 cases (costing approximately £60 for most items) to 100 cases. Small customers purchasing less than the minimum were expected to obtain supplies from cash-and-carry outlets or traditional wholesalers.

23. One company published recommended retail prices which assumed a gross margin of $16\frac{2}{3}$ per cent for the retailer. The other companies generally did not, except during the period of a promotion. One company explained that, as a basis for negotiating promotional deals, there were suggested retail prices which were calculated to give the retailer a profit of 23 to 25 per cent.

24. Companies did not always adhere strictly to the terms in their published price lists. One gave drop shipment terms to multiples, Co-operative societies and retailer-owned buying groups, the value of which might be equivalent to a discount of up to $2\frac{1}{2}$ per cent on certain orders. Other companies said

that they did not always feel able to enforce the normal prompt payment requirements.

25. There was a widespread practice of negotiating special terms outside those contained in price lists. One company gave discounts off the list price which could amount to as much as 17·4 per cent in the case of large cans of baked beans. Others offered overriding discounts to important customers, dependent on the achievement of an agreed level of purchases and sometimes on the fulfilment of other conditions such as participation in promotions or agreement to stock the full range of the company's products and to take up new products. One company said that the cost of trading with different customers was one of the factors taken into account in negotiating special terms, but it appeared that in general more importance was attached to the potential sales of large customers, the levels of competition encountered in their retail outlets, the prices at which they were prepared to sell and the need to ensure that customers did not only stock major lines of the supplier.

26. Promotional arrangements included special prices, advertising allowances and the supply of or payment for window bills and in-store display material. The terms offered to customers varied according to the anticipated sales resulting from the promotion. One company said that the difference between a major and a small promotion amounted to approximately 5p per case on baked beans (about 1 per cent of the list price). Understandings about retail selling prices could not be enforced other than by withholding promotional support on future occasions.

27. 'Own label' sales by the companies concerned amounted to about 6½ per cent of their total combined sales of all products, but the individual percentages varied widely in inverse ratio to total sales and were higher in the case of baked beans than in other products.

(*d*) *Ladies fine-gauge hosiery*

28. Some companies issued trade price lists, while others sold some or all of their products at negotiated prices which varied according to the state of competition. Price lists, where issued, did not show quantity discounts.

29. The practice with regard to minimum delivery quantities varied. Some companies imposed a minimum ranging from 30 to 50 dozens; in other cases there was no minimum but small deliveries were subject to a surcharge to cover handling and carriage charges.

30. Where price lists were issued, they generally included recommended retail prices which were calculated to provide a traditional mark-up.

31. Most companies offered special terms to large customers. These might take the form of discounts off the list price or retrospective rebates on sliding scales related to annual turnover. Special terms, where given, were not generally based on cost savings but on market competition, prestige of display in major retail outlets, the sales potential of the customer and his willingness to promote the supplier's products.

32. Some companies organised special promotion schemes which might involve price reductions, shared advertising, provision of point-of-sale material and travelling sales girls. In some, but not all cases, promotion schemes included understandings about the prices at which the product would be sold by the retailer.

33. 'Own label' sales represented about 40 per cent of total sales of all products by the companies concerned, but individual percentages varied widely. Sales by two companies consisted almost exclusively of 'own label'.

**Second questionnaire**

34. The following table shows the number of manufacturers of each product to whom the questionnaire was sent, the number who replied, total sales of each product in 1977[1] by those who replied to the questionnaire, and the estimated total market share represented by these sales.

TABLE 3

| | *Number of manufacturers who* | | | |
|---|---|---|---|---|
| *Product* | *received questionnaire* | *replied to questionnaire* | *Sales by C in 1977* | *Estimated market share* |
| *A* | *B* | *C* | *D* | *E* |
| | No. | No. | £m | per cent |
| Bread | 17 | 8 | 359·5 | 67 |
| Flour confectionery* | 42 | 16 | 273·2 | 67 |
| Biscuits | 32 | 10 | 408·1 | 95 |
| Canned beer | 30 | 6 | 198·9 | 85–90 |
| Cigarettes | 7 | 5 | 2,570·3† | 99 |
| Decorative paint | 86 | 10 | 161·1 | 67 |
| Domestic refrigerators | 28 | 6 | 83·2 | 60 |

* Most manufacturers of bread, and some manufacturers of biscuits, also supply flour confectionery.
† Including tax.

35. Other products supplied by the companies concerned, and their total sales in 1977, are shown in Table 4.

36. The most important differences between the first and second questionnaire was that the latter called for information about the total cost of special terms given in 1977 in respect of branded products supplied to (*a*) all customers and (*b*) each of the ten largest retail customers. This information, which is highly confidential and cannot be reported in detail, is summarised in paragraphs 4.27–4.31 of the report.

[1] Calendar year or nearest financial year.

TABLE 4

| | Other products | Total sales by the companies concerned in 1977 £m |
|---|---|---|
| Bread | Flour confectionery, biscuits, sugar confectionery, cooked meats, savoury products | 1,375·2* |
| Flour confectionery | Bread, biscuits, sugar confectionery, cooked meats, savoury products, frozen foods | |
| Biscuits | Bread, flour confectionery, sugar confectionery, crispbread, breakfast cereals, cake mixes | |
| Canned beer | Draught beer, bottled beer, wines, spirits, soft drinks | N/A |
| Cigarettes | Pipe tobacco, hand-rolling tobacco, cigars, cigarillos, snuff | 2,888·9† |
| Decorative paint | Industrial paint, decorators' sundries, wall coverings, carpet squares | 182·2 |
| Domestic refrigerators | Vacuum cleaners, floor polishers, dishwashers, home laundry equipment, cookers, irons, kettles | 364·6 |

* Separate figures for total sale of bread, flour confectionery and biscuits would not be meaningful because of the overlap between the products.

† Including tax.

### (e) *Bread and flour confectionery*

37. These products are dealt with together to avoid repetition because most suppliers of bread also supply flour confectionery.

38. Most companies reported a significant increase of some ten percentage points or more between 1973 and 1977 in sales to their ten largest retail customers as a proportion of their total sales. In 1977 these customers accounted in most cases for one-quarter to one-half of total sales. The greater concentration of sales was attributed mainly to the rapid growth of the major multiple retailers in the grocery trade, the consequent increase in their general market share and the relative decline of the independent sector. Other factors mentioned included the increase in home freezer ownership, the greater mobility and price awareness of shoppers and the decline in door-to-door trading.

39. Few companies prescribed a minimum quantitiy for deliveries, though some expressed reservations about delivering very small quantities to shops not on van routes.

40. There was a clear distinction between the pricing methods of the plant bakers and those of other food manufacturing companies which supply flour confectionery in addition to other grocery products. The latter issued trade price lists which might include quantity discounts as is common in the grocery trade, and some also allowed, or were prepared to negotiate, other incentive discounts. The plant bakers followed an entirely different practice. The only

price lists issued were lists of recommended retail prices. Trade prices were arrived at by deducting 12½ per cent in the case of bread or 20 per cent in the case of flour confectionery from the listed retail prices, but the trade prices in turn were subject to varying discounts negotiated with individual retailers. (The history of these discounts since 1974, with particular reference to bread, is briefly described in Appendix 10, paragraphs 14–17.)

41. Most companies prescribed a fixed period for settlement of accounts and some gave discounts for prompt settlement, but these arrangements were not always strictly enforced.

*(f) Biscuits*

42. The industry consisted of a few large companies which specialise in the manufacture of biscuits, accounting for 75 per cent or more of their total output, and a number of other companies which supply biscuits, in addition to flour confectionery or sugar confectionery. The proportion of total sales to the ten largest retail customers in 1977 ranged in most cases from one-quarter to one-half, and had increased since 1973. The companies attributed this to the changes which had taken place in the structure of the grocery trade and the continuing increase in the larger multiples' share of total sales.

43. Most companies prescribed a minimum quantity for deliveries, usually six cases though more in some instances.

44. All companies issued price lists and, except for one company which followed the practice of the bakery trade (see paragraph 40), these showed trade prices and recommended retail prices. Discounts related to delivery size, generally rising to about 10 per cent at the maximum, were given in most cases but were not always shown in the published price list. Many companies were prepared to give more favourable terms related to annual turnover to their larger customers.

45. The normal practice with regard to payment was to require settlement for deliveries in a given month by a prescribed date in the following month. The extent to which the requirement was enforced depended on the size and creditworthiness of the customer. There was no uniform practice about settlement discounts.

*(g) Canned beer*

46. The six major brewers who replied to our questionnaire were engaged on a large scale in the take-home trade, although this was also being entered increasingly by regional brewers. Sales of canned beer had begun as a marginal activity but, particularly in the form of lager, had become the most important growth element in the take-home trade and, at the time we made our enquiry, was estimated to account for approximately 8 per cent of all beer sales; sales companies organised as separate profit centres had been set up to handle this trade. A significant proportion of the canned beer sales of the major brewers was made to their own off-licence chains who were usually their largest customers. An increasing share of the market was being taken by licensed grocers and in 1977 they accounted for 18 per cent of canned beer sales:

multiple grocery retailers were the principal customers but some voluntary groups also ranked high. For about half the companies' sales to wholesalers had increased; this reflected the growing importance of voluntary groups and of cash-and-carry warehouses.

47. All the major brewers issued trade price lists. Some of these consisted of a single price for each item, discounts being negotiated with each customer by reference to the size of the account and other factors. Some brewers either operated or had operated with more than one price list and some gave discounts in the form of delivered quantity discounts. The majority of companies prescribed a minimum delivery quantity.

48. Prices and terms to wholesalers were generally the same as for multiple retailers but some companies gave special discounts to wholesalers sometimes to reflect the acceptance of a full load into a central warehouse. The majority of companies delivered direct to branches of multiple retailers. Promotional terms were generally the same as to other customers but two companies made appropriate re-sale prices a feature of the arrangements.

49. All but one of the brewers said that the terms of credit accorded were the same for all customers. Prompt settlement discounts were not granted. One commented that debt collection from multi-outlet customers were delayed, and another that multiples tended to take more credit than their smaller customers.

(*h*) *Cigarettes*

50. The three principal suppliers accounted for 99 per cent of the market in 1977 although a fourth supplier had since entered the market. The largest supplier had a market share of about 60 per cent. Cigarettes were sold through some 300,000 retail outlets. Sales through in-store tobacco kiosks and supermarkets and automatic vending machines had been increasing. However, the degree of concentration in retailing was low. 'Own label' sales were negligible. The proportion of sales to wholesalers had remained fairly constant over the five years to 1977 although one company reported a slight increase which reflected the increasing importance of cash-and-carry wholesalers.

51. All three companies issued trade price lists which provided for quantity discounts, the maximum discount being about 6 per cent although the qualifying amount for discount varied. A general rule was that the discount rate depended on the quantity delivered to one address at one time, but this was relaxed when further quantities were issued for delivery within the same settlement period. All three companies claimed that their quantity discount structures were broadly related to the cost of servicing customer accounts and that the cost variations could be measured. Prices and terms accorded to wholesalers were basically the same as to other customers but two companies gave better terms to a wholesaler who accepted full loads at a central warehouse than for delivery to branches of a multiple retailer.

52. The companies prescribed a minimum delivery quantity or imposed a handling charge for very small quantities. Sometimes customers were expected or required to order a minimum quantity within a specified trading period.

53. The prices shown in the price list included a prompt settlement discount (2 per cent in each case) which was allowed only if payment was received by the due date.

54. The cost to all three companies of special terms supplementary to the price list was small when expressed as a percentage of sales. The most important type was that of matched price promotions under which the manufacturer and the retailer contributed equally to a price cut which was passed on to the consumer. The manufacturers' object in giving the special terms was to promote sales and to retain or increase market share. Special terms were therefore not related to cost savings but to their expected effects on turnover.

*(j) Decorative paint*

55. The three largest manufacturers accounted for just under 45 per cent of the market in 1977 but there were many other suppliers, some very small. Sales of decorative paint by the responding companies represented well over 75 per cent of their total output in the majority of cases. Such paint was sold not only to retailers but also to the decorating trade and to wholesalers; sales to the trade were estimated to account for 50 to 60 per cent of all sales. Paint sales direct to retailers had increased during the period from 1974 to 1977, reflecting the growing importance of grocery and DIY multiples, whereas the share of wholesalers had fallen. Many of the companies supplied 'own label' paint as well as their national brands on a significant scale.

56. The majority of the larger companies did not issue price lists, prices being determined by negotiation with their customers individually and the range of prices was wide. Negotiation took account of such factors as total expected sales, size of individual orders and the competition to be faced. However, other companies issued price lists showing different prices according to the quantities ordered; other discounts were also given. Promotional allowances, often in the form of free supplies of paint, were also given for the purpose of smoothing fluctuations in demand.

57. The majority of companies did not prescribe a minimum quantity for delivery.

58. About half the companies required payment within a fixed period. Similarly, about half gave a prompt settlement discount which was generally $2\frac{1}{2}$ per cent. There was little variation in the application of credit terms.

*(k) Domestic refrigerators*

59. Sales of refrigerators in 1977 by the responding companies represented about 30 per cent of their total output and the three major suppliers in the United Kingdom accounted for about 45 per cent of the market. Import penetration was high and increasing. More than half of the majority of suppliers' total sales of refrigeration equipment went to their ten largest retail customers. Sales of 'own label' refrigerators were insignificant for the majority of companies. The proportion of sales to wholesalers had generally decreased, mainly due to the growth of large retailers.

60. The majority of companies issued trade price lists. Prices generally provided for quantity discounts which most commonly were related to quantities ordered over a period but account was taken of savings which could be achieved by single bulk deliveries, in warehousing, distribution and administration costs and of promotional factors. Price terms for wholesalers were generally rather better than for retailers.

61. All the companies required payment within a stated period which was most commonly a month. Terms were applied uniformly and some companies offered a discount for prompt or early settlement.

ANNEX A DISCOUNTS TO RETAILERS

# Questionnaire

**Sales and distribution**

1. Do you supply paper handkerchiefs?
IF NOT, PLEASE DISREGARD THE REST OF THIS QUESTIONNAIRE.

2. What other products do you supply?
[*Note:* What is wanted is a list of the products which are supplied along with paper handkerchiefs by your company or by the sales organisation within your group which supplies paper handkerchiefs.]

3. Please state:
(*a*) the aggregate value of your United Kingdom sales of the products, including paper handkerchiefs, listed in the answer to question 2 in the calendar year 1976 (or nearest financial year);
(*b*) the aggregate value of your United Kingdom sales in the calendar year 1976 (or nearest financial year) to each of your twenty largest retail customers, including any retail outlets owned by your company or by an associated company.

[*Notes:* (1) 'Value' means the value exclusive of VAT.
(2) 'Retail customer' means any customer with a substantial retailing activity.]

4. Please state:
(*a*) the volume and value of your United Kingdom sales of paper handkerchiefs in each of the five calendar years 1972 to 1976 (or nearest financial years);
(*b*) the value of your United Kingdom sales of paper handkerchiefs in the calendar year 1976 (or nearest financial year) to each of your twenty largest retail customers, including any retail outlets owned by your company or by an associated company.

IF YOU DO NOT SELL DIRECT TO RETAILERS OR VOLUNTARY GROUPS, PLEASE DISREGARD THE REST OF THIS QUESTIONNAIRE. ALL FOLLOWING QUESTIONS RELATE TO PAPER HANDKERCHIEFS TOGETHER WITH THE OTHER PRODUCTS LISTED IN THE ANSWER TO QUESTION 2.

5. Do you sell to retailers throughout the United Kingdom or only in a particular locality? If the latter, please state the locality.

6. Do you have standing arrangements with any of your retail customers for the supply of minimum quantities of paper handkerchiefs or of any of

the other products listed in the answer to question 2? If so, please name the customers and explain the form which the arrangements take.

7. Do you impose a minimum value or quantity for orders? If so, what is it and does it effectively preclude direct purchase by smaller retailers?

8. What delivery service do you normally provide?

**Prices and discounts**

9. Do you have a trade price list for issue to your retail customers? If so, please supply a copy.

10. If your price list includes recommended retail prices, or if you give guidance on retail prices ('suggested prices'), what is the basis on which the recommended or suggested prices are calculated?

11. If you do not issue a price list, how is the price at which a sale is made arrived at? What arrangements are made for giving better terms for larger quantities?

12. If the price charged or the discount allowed depends on the quantity, is the relevant quantity:

(*a*) the quantity to be delivered to one address at one time;

(*b*) the total quantity ordered irrespective of the delivery instructions;

(*c*) the total quantity expected to be ordered by the customer during a period;

(*d*) some other quantity?

13. What is the price charged or the discount allowed if the quantity delivered is less than the quantity ordered?

14. Are the more favourable terms you give for larger quantities based on cost savings? If so, how do these savings arise, what method do you use for calculating them, and how do you relate the results of these calculations to the discounts which you offer? If other factors are taken into account in determining the size of discounts allowed for different quantities, what are they?

15. What discounts do you give for prompt payment?

16. Do you in practice, without specific agreement, waive your standard terms to any of your twenty largest retail customers? For example, do you refrain from enforcing normal prompt payment or size of delivery terms? Please give an estimate of the value of such concessions as a percentage of your sale price to each customer.

**Special arrangements**

17. Do you negotiate with any of your twenty largest retail customers special terms (other than terms for 'own label' products—see questions 23 and 24) outside those contained in your price list (if any) and not known or not available to your customers generally? If so, please supply:

(*a*) the names of your retail customers currently benefiting from such special terms;

(*b*) full details of the special terms agreed.

[*Note:* Special terms include not only special prices, discounts or rebates, but also any special benefits or services not ordinarily granted, including for example:

(i) special credit facilities or loans;

(ii) provision of shop equipment;

(iii) a shelf filling or price marking service;

(iv) a privileged delivery service.]

18. Are these special terms based on cost savings? If so, please state in each case how these savings arise, what method you use for calculating them, and how you relate the results of these calculations to the terms which you offer or allow. If not, why do you concede terms which are not so based?

19. Where you concede special terms, other than for trade promotions (see questions 21 and 22), is there any understanding as to the prices at which your products will be sold by the retailer?

**Promotions**

20. What arrangements do you make for sharing advertising costs with any of your twenty largest retail customers under which your products are featured in their advertisements or they are named as sources of supply in your advertisements?

21. Do you organise special promotion schemes with some retail customers on terms more favourable than those offered to other customers? Please indicate the extent of such differences in any recent promotion schemes.

22. Do your promotion schemes involve undertakings on the part of retailers as to the prices at which your products will be sold?

**Retailers' brands**

23. Do you supply products for sale under distributors' 'own labels'? If so, please state the value of such sales (included in the figures supplied in answer to questions 3(*a*) and 4(*a*)) in the calendar year 1976 (or nearest financial year).

24. Please comment on the relative importance which you attach in negotiating prices for 'own label' products to:

(*a*) differences in unit costs of production compared with your branded products;

(*b*) savings in selling and delivery costs;

(*c*) savings in advertising and promotional costs;

(*d*) competition from other suppliers;

(*e*) ensuring re-ordering;

(*f*) other considerations.

ANNEX B DISCOUNTS TO RETAILERS

# Questionnaire

**Sales and distribution**

1. Do you supply biscuits?
IF NOT, PLEASE DISREGARD THE REST OF THIS QUESTIONNAIRE.

2. What other products do you supply?
[*Note:* What is wanted is a list of the products which are supplied along with biscuits by your company or by the sales organisation in your group which supplies biscuits.]

3. Please state:

(*a*) the volume and value of your United Kingdom sales of biscuits in each of the five calendar years 1973 to 1977 (or nearest financial years);

(*b*) the names of your ten largest retail customers for biscuits (including any retail outlets owned by your company or by an associate company), and the volume and value of your sales of biscuits to each customer in the calendar year 1977 (or nearest financial year).

[*Notes:* (1) 'Value' means the net invoice value exclusive of VAT.
(2) 'Retail customer' means any customer with a substantial retailing activity.
(3) If you sell direct to retail co-operative societies, please treat them as separate customers.]

4. Please state:

(*a*) the volume and value of your United Kingdom sales of all the products, including biscuits, listed in the answer to question 2 in the calendar year 1977 (or nearest financial year);

(*b*) the names of your ten largest retail customers for all products (including any retail outlets owned by your company or by an associate company), and the volume and value of your sales to each customer in the calendar year 1977 (or nearest financial year).

5. Do the figures supplied in answer to questions 3(*a*) or 4(*a*) include any products for sale under distributors' 'own labels'? If so, please state for the calendar year 1977 (or nearest financial year):

(*a*) the value of 'own label' sales of biscuits;

(*b*) the value of 'own label' sales of all products, including biscuits.

6. For all products, including biscuits, please express the volume of sales to:

(*a*) your ten largest retail customers in 1977, and

(*b*) those customers who were your ten largest retail customers in 1973 as percentages of your total United Kingdom sales in 1977 and 1973 respectively. If there has been any substantial change in the proportion of your sales going to your ten largest retail customers, to what do you attribute this change?

IF YOU DO NOT SELL DIRECT TO RETAILERS OR VOLUNTARY GROUPS, PLEASE DISREGARD THE REST OF THIS QUESTIONNAIRE. ALL FOLLOWING QUESTIONS RELATE TO BISCUITS TOGETHER WITH THE OTHER PRODUCTS LISTED IN THE ANSWER TO QUESTION 2.

7. Do you impose a minimum value or quantity for deliveries? If so, what is it and does it apply to all retailers?

**Prices and discounts**

8. Do you have a trade price list for issue to your retail customers? If so, please supply a copy of the current edition.

9. If you do not issue a price list, how is the price at which a sale is made arrived at?

10. Do you give more favourable terms for larger quantities? If so, please describe how you do this. Please explain whether the terms given depend on:

(*a*) the quantity to be delivered to one adress at one time;

(*b*) the total quantity ordered irrespective of the delivery instructions;

(*c*) the total quantity expected to be ordered by the customer during a period;

(*d*) some other quantity (please specify).

11. Are you always able to enforce the terms described in your answer to question 10 or are you sometimes forced to make concessions to certain customers? Please state the circumstances in which you are obliged to make concessions.

12. (*a*) What factors do you take into account when deciding what terms to give for larger quantities? Please list those factors which relate to cost savings and say whether you have undertaken any measurement of cost savings.

(*b*) Is it, in your view, practicable to measure the cost savings which arise?

13. Do you stipulate payment within a fixed period? What discounts, if any, do you give for prompt payment? Do the same conditions apply to all customers, and are they uniformly enforced? If not, in what circumstances are they not enforced?

**Special arrangements**

14. Do you negotiate with any of your retail customers special terms (other than terms for 'own label' products) outside those contained in your price list (if any) and not known or not available to your customers generally? If so, please state:

(*a*) which of the following special terms is applicable to your company:

(i) special prices or discounts, including concessions on quantity discounts;

(ii) retrospective rebates or overriders;

(iii) special promotions;

(iv) contributions to retailer's advertising;

(v) provision of shop equipment;

(vi) provision of sales staff at your expense;

(vii) a privileged delivery service;

(viii) special credit facilities or loans;

(ix) any other special benefit or service not ordinarily granted (please specify).

(*b*) of those special terms that are applicable, what was the cost of each to your company in 1977 (or nearest financial year).

15. Do you negotiate with any of your ten largest retail customers any of the special terms mentioned in question 14? If so, please supply:

(*a*) the names of the customers who benefited from such special terms in 1977;

(*b*) which of the special terms each customer received;

(*c*) the cost to your company of the special terms given to each of your ten largest retail customers in 1977 (or nearest financial year).

16. Do you negotiate with any of your smallest retail customers any of the special terms mentioned in question 14? If so, please supply:

(*a*) the names of five of your smallest retail customers who benefited from such special terms in 1977;

(*b*) which of the special terms each customer received.

17. (*a*) What factors do you take into account when giving special terms? Please list those that relate to cost savings and say whether you have undertaken any measurement of cost savings.

(*b*) Is it, in your view, practicable to measure the cost savings which arise?

18. Do you, broadly speaking, supply (*a*) wholesalers and your smallest retail customers and (*b*) large multiples on equivalently favourable terms after taking account of differential costs of supply? If not, please explain why not.

19. Where you concede special terms, is there any understanding as to the prices at which your products will be sold by the retailer? What form does the understanding take, and what do you do if the retailer fails to comply with it?

APPENDIX 6

*(referred to in paragraphs 4.3, 7.4, 7.28)*

# Area price survey

**Introduction**

1. This appendix summarises the findings of a survey of retailers covering the buying and selling prices of a number of products. It was carried out jointly by the Commission's staff and Binder Hamlyn, chartered accountants.

2. The aim of the survey was to find out the variation in the prices at which different retailers bought and sold ten products, and also the relationship between buying and selling prices. The buying prices collected were on a delivered basis at the shop. The selling prices were the prices for cash adjusted for the value of trading stamps or Co-operative dividends provided to the customer.

3. The survey involved collection of price information for the ten products listed in Table 4. In respect of all products price information was collected for between two and five brands or sizes. In all, over 900 pairs of price observations covering the ten products were obtained for 170 retail outlets in Bromley, Dewsbury and Stirling during the two weeks preceding 14 April, 1979. An analysis of the retail outlets is given in Table 5 and an analysis of the product observations in Table 6.

4. The survey is subject to the following qualifications:

(*a*) The range of prices collected over a period as short as a fortnight may differ from the range of prices resulting from averaging observations taken over a substantially longer period. In particular, the survey recorded temporary price reduction to or by some shops but did not pick up similar price reduction made at other times as a result of the same suppliers' promotional activity.

(*b*) The basis for the selection of three areas and 170 outlets surveyed is explained in paragraphs 15–18. However, the former account for less than 1 per cent of all retail sales and the latter less than 0·05 per cent of all retail outlets in Great Britain and only eight Co-operative outlets were covered. In respect of multiples and Co-operatives, buying and selling prices tend to reflect centralised decisions, although the selling prices recorded in the shops belonging to a particular organisation may have been different from those in other shops within the same organisation.

(*c*) The buying prices collected from retailers were not all on the same basis. In order to make all buying prices comparable on a delivered basis, certain estimated adjustments to net invoice prices were made in respect of distribution costs where these were incurred by the retailer (see paragraph 20). Buying prices were also adjusted to take account of possible retrospective discounts (see paragraph 21). Unquantifiable benefits received by some shops were ignored (see paragraph 19).

5. The survey does not measure or estimate the extent or magnitude of the reference practice. The survey did not collect information on delivery costs or quantities purchased although these factors are material to differences in buying prices.

**Summary of results**

*Differences in prices by categories of shops*

6. Table 1 shows for each of the 10 products differences in average prices and gross margins by class of retailer. In order to calculate the averages in Table 1, buying and selling prices for each brand of product were indexed with the base of 100 representing the lowest selling price (excluding VAT) observed for that brand. The gross margin percentages in Table 1 are based on selling prices.

7. In Table 1 the results are analysed by class of retailer defined as follows:

| | |
|---|---|
| 4 major grocery multiples | —Associated Dairies Ltd<br>Fine Fare Ltd<br>J Sainsbury Ltd<br>Tesco Stores Ltd |
| Other multiples | —Retailers with 10 or more branches excluding the above 4 multiples and Co-operatives |
| Independents | —Retailers with less than 10 branches |
| Co-operatives | —Co-operative Retail Societies |

The results of the four grocery multiples named above are shown separately, partly because of the importance of grocery retailing in relation to the inquiry and partly because of the importance of the presence of the four named multiples in the areas selected for the survey. As might be expected, for non-grocery products the selected multiples were not the most important retail outlets in the area. Table 1 does not distinguish independent retailers between those who were voluntary group members and those who were not since it was impossible to attach significance to such results.

8. Table 1 shows that:

(*a*) For each of the products in the survey the average buying of the independents were higher than the average buying prices of the multiples and the Co-operatives. Over all the products the average buying price disadvantage of the independents was 10 per cent.

(*b*) As between the four selected major multiples and other multiples, the buying prices of the former were found to be materially more favourable than the latter in respect of baked beans and biscuits but to be equivalent or less favourable for non-grocery products which are the speciality of outlets outside the grocery field.

(*c*) For each product the average selling price of the independents was substantially higher than the average selling price of the multiples. As compared with all multiples, the average selling prices of independents were found to be particularly high in the case of baked beans, bread, toothpaste and paint. However, the average selling prices of independents

**TABLE 1 Average selling prices, buying prices, gross margins and standard deviations for individual products**

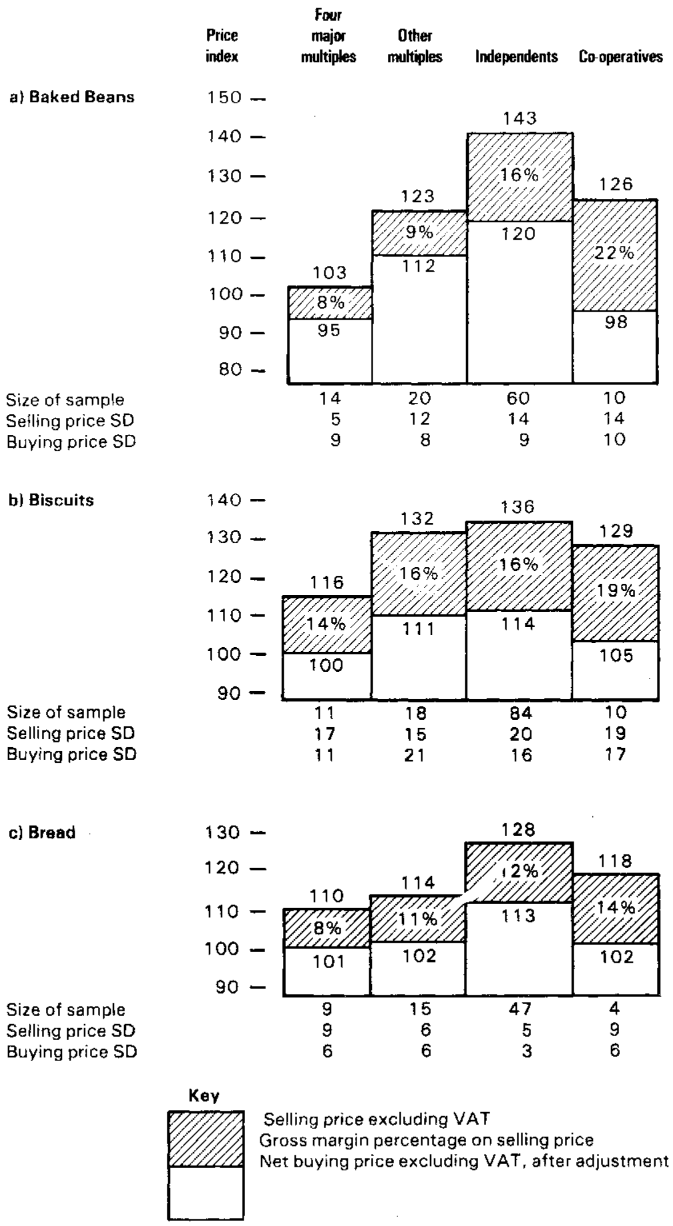


TABLE 1 **Average selling prices, buying prices, gross margins and standard deviations for individual products** (*cont*)

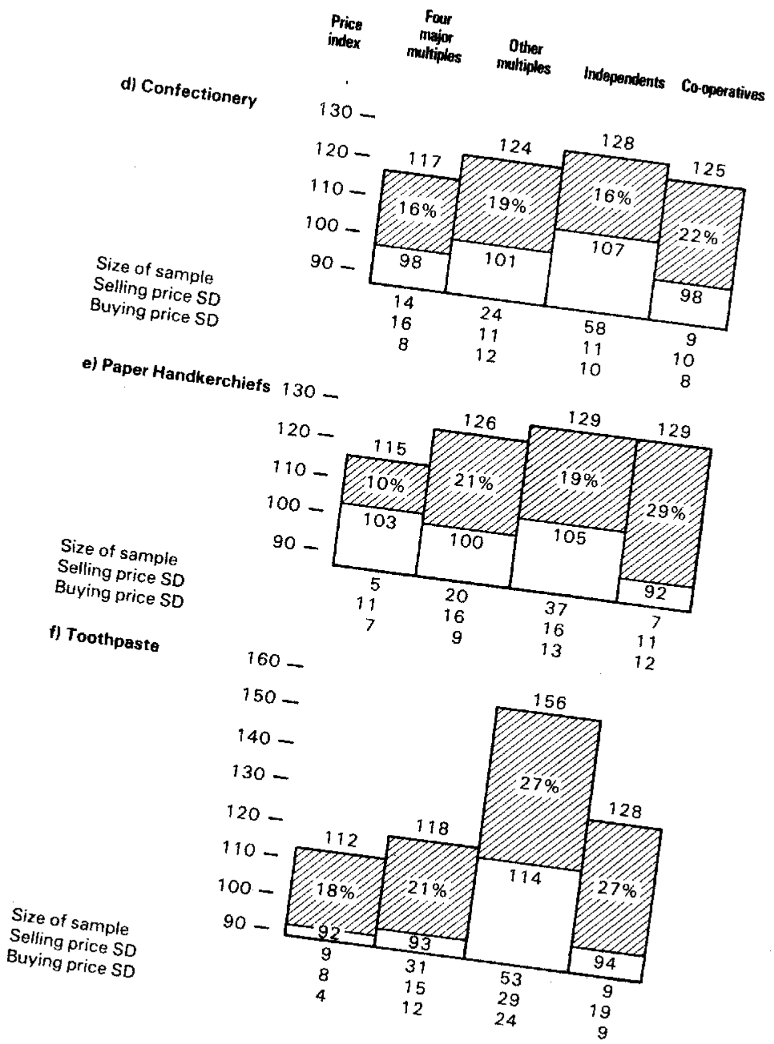
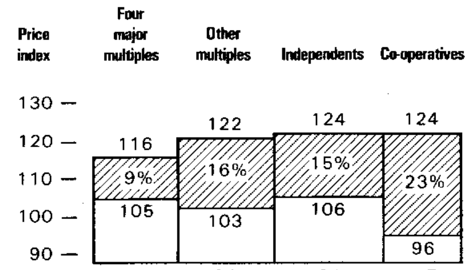


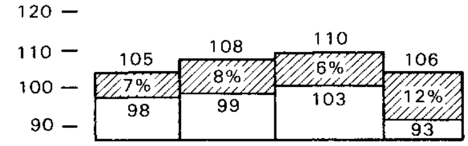
TABLE 1 **Average selling prices, buying prices, gross margins and standard deviations for individual products** *(cont)*

g) Canned Beer



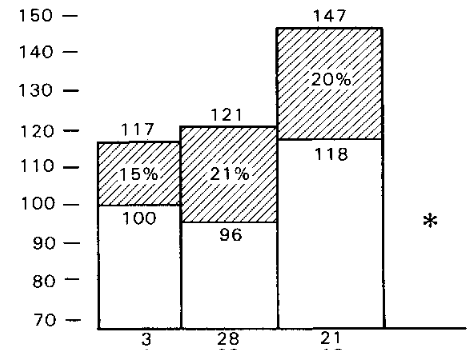

| | Four major multiples | Other multiples | Independents | Co-operatives |
|---|---|---|---|---|
| Size of sample | 5 | 24 | 34 | 7 |
| Selling price SD | 14 | 17 | 12 | 12 |
| Buying price SD | 12 | 8 | 8 | 7 |

h) Cigarettes



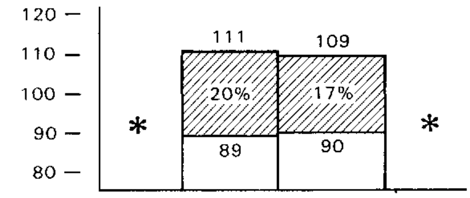

| | Four major multiples | Other multiples | Independents | Co-operatives |
|---|---|---|---|---|
| Size of sample | 14 | 48 | 95 | 12 |
| Selling price SD | 4 | 4 | 4 | 3 |
| Buying price SD | 3 | 5 | 5 | 6 |

i) Paint




| | Four major multiples | Other multiples | Independents | Co-operatives |
|---|---|---|---|---|
| Size of sample | 3 | 28 | 21 | |
| Selling price SD | 12 | 28 | 19 | |
| Buying price SD | 8 | 17 | 19 | |

j) Refrigerators




| | Four major multiples | Other multiples | Independents | Co-operatives |
|---|---|---|---|---|
| Size of sample | | 30 | 5 | |
| Selling price SD | | 9 | 9 | |
| Buying price SD | | 7 | 6 | |

* Information not used because of insufficient observations.

were equivalent to or little above the average selling prices of the 'other multiples' in respect of biscuits, confectionery, paper tissues, canned beer, cigarettes and refrigerators.

(*d*) For most individual products, the average selling prices of the Co-operatives were higher than those of all multiples but below those of the independents. This result is based on a particularly small sample of Co-operative retail outlets.

(*e*) For each product where comparison is possible, the average selling prices of the four major multiples were below those of the other multiples.

(*f*) The gross margins of the Co-operatives were materially higher than those of either multiples or independents. This result is based on a particularly small sample of Co-operative retail outlets.

(*g*) For every product the gross margins of the four selected major multiples were on average lower, and in many cases substantially lower, than those of the other multiples.

(*h*) In respect of each category of shop there tended to be greater dispersion of selling prices about the average selling price than of buying prices about the average buying price. Because of the dispersion of both buying and selling prices about the average some independents were buying as favourably as some multiples and some were selling as favourably.

**Relationships between buying and selling prices**

9. Table 2 summarises the statistical relationships found to subsist between retailers' buying and selling prices in respect of each of the ten products.

TABLE 2

| *Product* | *Average buying price* 1 | *Average selling price* 2 | *Slope* 3 | *Square of correlation coefficient* 4 |
|---|---|---|---|---|
| Baked beans | 14·2p | 16·2p | 1·03 | 0·50 |
| Canned beer | 22·0p | 25·9p | 0·86 | 0·31 |
| Toothpaste | 22·6p | 30·2p | 1·00 | 0·51 |
| Paper handkerchiefs | 27·4p | 33·9p | 0·91 | 0·45 |
| Refrigerators | £57·8 | £71·7 | 1·22 | 0·90 |
| Biscuits | 16·2p | 19·4p | 1·04 | 0·67 |
| Paint | £2·5 | £3·1 | 1·12 | 0·84 |
| Bread | 24·8p | 27·8p | 0·96 | 0·53 |
| Cigarettes | 47·4p | 51·3p | 0·56 | 0·42 |
| Chocolate confectionery | 7·3p | 8·9p | 1·20 | 0·90 |

*Footnote:* Columns 1 and 2 show the average buying price and the average selling price for each product. Column 3 shows the slope of the regression line (ie the increase in selling price per unit increase in buying price). Column 4 shows the square of the correlation coefficient (ie the strength of the observed relationship between selling and buying price, or more exactly, the proportion of the selling price variation capable of being explained by the variation in buying price).

10. In the case of all commodities there was a positive and statistically significant (at the 5 per cent level) correlation between retailers' buying and selling prices. For refrigerators, paint and chocolate confectionery nearly all the variation in retailers' selling prices observed in the area price survey could be explained by differences in the prices at which they bought the products. In the case of biscuits most of the selling price variation could be so explained, but in the case of baked beans, canned beer, toothpaste, paper handkerchiefs, bread and cigarettes only one-half, or less, of the selling price variation could be so explained.

11. For products where the slope of the regression line is approximately unity, there is no difference between the absolute margins (ie the difference between selling and buying prices) obtained by retailers buying at low prices and those buying at high prices. In this category were baked beans, toothpaste, paper handkerchiefs, biscuits and bread. Where the slope of the regression line is significantly greater than unity, this indicates a tendency for absolute margins to rise with increasing buying prices. Products in this second category were refrigerators, paint and chocolate confectionery. Where the slope of the regression line is significantly less than unity, this indicates a tendency for absolute margins to fall with increasing buying prices. Products in this third category are canned beer and cigarettes. However, it should be noted that both these products are subject to excise duty which reduced the variability of buying prices (see Table 1).

12. The survey data were also examined to see whether there were significant differences in the relationships between buying and selling prices as between all multiples and the independents.

TABLE 3

| | *Multiples* | | *Independents* | |
|---|---|---|---|---|
| *Product* | *Slope* | *Square of correlation coefficient* | *Slope* | *Square of correlation coefficient* |
| Baked beans | 0·95 | 0·62 | 0·81 | 0·31 |
| Canned beer | 1·34 | 0·50 | 0·71 | 0·26 |
| Toothpaste | 0·92 | 0·56 | 0·83 | 0·40 |
| Paper handkerchiefs | 1·18 | 0·33 | 1·01 | 0·60 |
| Refrigerators | 1·18 | 0·91 | 1·91 | 0·30 |
| Biscuits | 0·78 | 0·59 | 1·13 | 0·72 |
| Paint | 1·17 | 0·76 | 1·08 | 0·93 |
| Bread | 0·63 | 0·24 | 0·38 | 0·80 |
| Cigarettes | 0·74 | 0·50 | 0·54 | 0·42 |
| Chocolate confectionery | 1·33 | 0·90 | 1·13 | 0·91 |

13. Table 3 shows that for six out of the ten products (baked beans, canned beer, toothpaste, refrigerators, bread and cigarettes) more of the variation in selling prices is capable of being explained by variation in buying prices for the multiples than for the independents, but the reverse is true of three products (paper handkerchiefs, biscuits and paint). It can also be seen from Table 3 that, for eight out of ten of the products, the slope of the least-squares regression was higher for all multiples than independents. This means that there was a greater tendency for the multiples to sell products at a low price

when they bought at relatively low prices, and to sell at a relatively high price when they bought at relatively high prices, than is the case for independents.

### Selection of product groups

14. Table 4 describes the products selected for the survey. For each shop visited the prices of the two best selling brands of those products stocked were included.

### Selection of shops

15. The number of shops to be surveyed in each class was determined having regard to published information on the pattern of sales of each product by type of retail outlet. The actual shops selected within each class were, as far as possible, chosen as representative of the shops within the three areas.

16. An analysis of the shops chosen for the survey by type and location is given at Table 5.

17. An analysis of product observations made by location and type of retailer is given at Table 6.

### Choice of locations

18. Bromley, Dewsbury and Stirling areas were selected for the survey. Bromley was chosen as a large suburban area of London, Dewsbury as a northern industrial town and Stirling as a smaller urban centre.

### Determination of buying prices in the survey

19. The net invoice price of the commodity after the deduction of all trade discounts was taken as our base. However, a number of adjustments were made to make buying prices comparable as between the different classes of retailer (see paragraphs 20–22). No account was taken of the following: promotional allowances, shelf filling services, free display material provided by the supplier, and the taking of extended credit.

### Delivery costs

20. Five per cent was added to buying prices to reflect delivery costs in the case of retailers who bought from cash-and-carry wholesalers. Four per cent was added to multiples' buying prices, where appropriate, to represent the cost of delivery from a central depot to the branch, except in cases where a more specific figure was supplied by the retailer.

TABLE 4 **Product specification**

| *Product* | | *Size* | *Brand* | *Manufacturer* |
|---|---|---|---|---|
| Baked beans | | 16 oz can | Heinz | Heinz |
| | | | Smedley HP | Smedley-HP |
| Canned beer (plain lager) | | 15 oz can | Skol | Allied Breweries |
| | | | Carlsberg | Carlsberg |
| | | | Tennants | Caledonian Breweries |
| | | | McEwans | Scottish & Newcastle |
| (Export ale) | | 15 oz can | McEwans | Scottish & Newcastle |
| Toothpaste | | 50 ml tube | Colgate | Colgate Palmolive |
| | | | Macleans | Beechams |
| Paper handkerchiefs | | Mansize Packet | Kleenex | Kimberley Clark |
| | | | Scotties | Bowater-Scott |
| Refrigerators | | 5–6 cu ft | Tricity | Tricity |
| | | | Electrolux | Electrolux |
| | | | LEC | LEC |
| Biscuits | | 200 grammes packet | Jacobs Cream Crackers | Associated Biscuits |
| | | | Nice | Huntley & Palmer or Peak Frean |
| | | 250 grammes packet | McVities plain digestive | United Biscuits |
| Paint (Brilliant White) | —Gloss | 1 litre can | Dulux | ICI |
| | | | Crown | Crown |
| | —Vinyl —Emulsion | $2\frac{1}{2}$ litre can | Dulux | ICI |
| | | | Crown | Crown |
| Bread | | 28 oz loaf white sliced & unsliced | Mothers Pride | Rank Hovis McDougall |
| | | | Sunblest | Associated British Foods |
| Cigarettes | | King Size Packets of 20 | Silk Cut | Gallahers |
| | | | Embassy, J Players No 6, John Players special | Imperial Tobacco |
| Chocolate confectionery | | Single and multiple packs | Mars Bar | Mars |
| | | | Kit Kat | Rowntrees |
| | | | Jacobs Club Biscuit | Associated Biscuits |

### Overriders

21. Buying prices were adjusted to take account of retrospective discounts based on the achievement of sales thresholds. Information given by retailers indicated that these discounts generally fell within a range of $\frac{1}{2}$ to $2\frac{1}{2}$ per cent. Retailers emphasised that the thresholds were not always achieved, nor were discounts at maximum rate obtained.

22. Allowances were made for surcharges levied by voluntary groups. Such surcharges include a small charge for group advertising and the provision of display material but this is thought to be insignificant.

### Promotional offers

23. A number of brands chosen for the survey were fast selling lines. They were often on promotional offer, in many cases in the form of a 'flashpack' where a manufacturer sold the goods more cheaply and specified on each packet a lower than usual selling price. About 25 per cent of the prices sampled were promotional offers and these lasted for different periods. The goods could be on offer for four to six weeks after which the goods returned to a 'normal price' or the offer might last for a number of months.

TABLE 5 **Analysis of retailers**

1. *Class of Outlet:*

| | *4 Major multiples* | *Other multiples excluding Co-operatives* | *Independents* | *Co-operatives* | *Total* |
|---|---|---|---|---|---|
| Bromley | 2 | 24 | 35 | 2 | 63 |
| Dewsbury | 1 | 13 | 36 | 3 | 53 |
| Stirling | 1 | 16 | 34 | 3 | 54 |
| Total | 4 | 53 | 105 | 8 | 170 |
| (percentage) | (2%) | (31%) | (62%) | (5%) | (100%) |

2. *Type of shop:*

| | *Baker* | *CTN* | *Grocer* | *Electrical* | *Paint* | *Chemist* | *Off-Licence* | *Departmental Variety and Mail Order* | *Total* |
|---|---|---|---|---|---|---|---|---|---|
| Bromley | 3 | 9 | 22 | 5 | 10 | 4 | 4 | 6 | 63 |
| Dewsbury | 2 | 4 | 24 | 9 | 4 | 7 | 2 | 1 | 53 |
| Stirling | 3 | 4 | 27 | 6 | 4 | 6 | 2 | 2 | 54 |
| Total | 8 | 17 | 73 | 20 | 18 | 17 | 8 | 9 | 170 |
| (percentage) | (5%) | (10%) | (42%) | (12%) | (11%) | (10%) | (5%) | (5%) | (100%) |

3. *Location of shop:*

| | *Town centre* | *Town outskirts* | *Surrounding area* | *Total* |
|---|---|---|---|---|
| Bromley | 16 | 9 | 38 | 63 |
| Dewsbury | 24 | 14 | 15 | 53 |
| Stirling | 19 | 7 | 28 | 54 |
| Total | 59 | 30 | 81 | 170 |
| (percentage) | (35%) | (18%) | (47%) | (100%) |

TABLE 6 **Analysis of product observations**

| | *Baked Beans* | *Biscuits* | *Bread* | *Confectionery* | *Paper Handkerchiefs* | *Toothpaste* | *Canned Beer* | *Cigarettes* | *Paint* | *Refrigerators* | *Total* | % |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 *By class of outlet:* | | | | | | | | | | | | |
| 4 Major multiples | 10 | 9 | 7 | 12 | 4 | 9 | 3 | 13 | 3 | 2 | 72 | 8 |
| Other multiples | 22 | 23 | 17 | 24 | 20 | 31 | 26 | 46 | 25 | 43 | 276 | 30 |
| Independents | 61 | 85 | 47 | 59 | 35 | 56 | 32 | 87 | 22 | 9 | 493 | 54 |
| Co-operatives | 9 | 13 | 2 | 8 | 9 | 8 | 11 | 13 | 1 | 3 | 77 | 8 |
| | 102 | 130 | 73 | 103 | 68 | 104 | 72 | 159 | 50 | 57 | 918 | 100 |
| 2 *By location:* | | | | | | | | | | | | |
| Bromley | 34 | 47 | 30 | 47 | 20 | 45 | 20 | 63 | 37 | 25 | 368 | 40 |
| Dewsbury | 25 | 23 | 18 | — | 13 | 24 | 8 | 41 | 3 | 14 | 169 | 19 |
| Stirling | 43 | 60 | 25 | 56 | 35 | 35 | 44 | 55 | 10 | 18 | 381 | 41 |
| | 102 | 130 | 73 | 103 | 68 | 104 | 72 | 159 | 50 | 57 | 918 | 100 |

## Appendix 7

*(referred to in paragraphs 4.4, 5.10, 5.23)*

# Wholesaler survey

## Summary of replies to questionnaire

1. A questionnaire (which is reproduced as Annex A) was sent to 42 companies known to cover a wide variety of products and types of wholesaling activity. Three of these companies were subsequently discovered to be, in effect, buying agents for a number of wholesale confectioners and similar in some respects to the head offices of grocery voluntary groups. They were sent a revised questionnaire more suited to their mode of operation but only one company responded; unless otherwise stated this company has been regarded as a voluntary group confectionery wholesaler for the purposes of analysis. Of the remaining 39 companies, 28 replied to the questionnaire.

2. About half of the companies combined various types of wholesaling activity. For example, some undertook traditional wholesaling and cash-and-carry operations whereas others combined voluntary group and cash-and-carry group activities. Some simply restricted themselves to one field of operation. The following table shows the number of wholesalers in each of these categories who replied to our questionnaire, according to broad trade sectors:

TABLE 1 **Replies from wholesalers**

| | *Grocery* | *Pharmaceutical* | *Drink, Tobacco and Confectionery* | *Miscellaneous* | *Total* |
|---|---|---|---|---|---|
| Traditional wholesale | | 2 | 4 | 2 | 8 |
| Cash-and-carry | 4 | | | | 4 |
| Voluntary group | 2 | | 1 | | 3 |
| Cash-and-carry group* | 1 | | | | 1 |
| Traditional wholesale and cash-and-carry | 1 | | 2 | | 3 |
| Traditional wholesale and voluntary group | 3 | 2 | | 3 | 8 |
| Voluntary group and cash-and-carry group† | 2 | | | | 2 |
| TOTAL | 13 | 4 | 7 | 5 | 29 |

* A cash-and-carry group is a group of wholesale companies for which common purchasing terms are negotiated for certain products.

† Excluding the confectionery company referred to in paragraph 1.

3. The following table shows the products traded by the companies in the various trade sectors. Where a figure is shown in brackets this is the number of companies in the sector dealing in that particular product although it does not necessarily indicate the importance of a product to any company or companies within a sector. The table also shows the relevant annual turnover for 1978 or the nearest convenient financial year for the companies[1] in the sector.

[1] Excluding the confectionery company referred to in paragraph 1.

TABLE 2 **Products traded by respondent wholesalers**

| *Sector* | *Number of companies* | *Products traded* | *Annual turnover £'000* |
|---|---|---|---|
| Grocery | 13 | Groceries (13)<br>Cigarettes and tobacco (7)<br>Wines and spirits (6)<br>Pharmaceutical (4)<br>Confectionery (3)<br>Hardware<br>Clothing and footwear<br>Household goods<br>Fruit and vegetables<br>Toiletries<br>Electrical<br>Stationery | 594,603 |
| Pharmaceutical | 4 | Pharmaceutical (4)<br>Photographic<br>Baby foods | 132,591 |
| Drink, Tobacco and Confectionery | 7 | Cigarettes and tobacco (5)<br>Confectionery (5)<br>Beers<br>Wines and spirits<br>Pharmaceutical<br>Groceries<br>Toiletries | 254,937 |
| Miscellaneous | 5 | Decorating supplies<br>Horticultural<br>Electrical<br>Hardware<br>Stationery<br>Toys | 167,027 |
| | | *Total for all sectors* | *1,149,158* |

4. All the companies were asked whether they operated within a group of companies having activities other than wholesaling and, if so, what these activities were. Fifteen responded in the affirmative and the following additional activities were mentioned:

TABLE 3 **Activities additional to wholesaling**

| | |
|---|---|
| Grocery sector | Grocery retailing<br>Food packing<br>Electronics<br>Property holding<br>Vehicle repairing |
| Pharmaceutical sector | Pharmaceutical retailing<br>Manufacture of pharmaceuticals<br>Removals and storage |
| Drink, Tobacco and Confectionery sector | Retailing of beers, wines, spirits, cigarettes and tobacco<br>Management of off-licences and restaurants |
| Miscellaneous sector | Wide variety of activities in manufacturing, retailing, export and pre-packing and in construction, engineering and service industries. |

5. The companies which received the questionnaire were selected from trade lists and other sources with the object of obtaining a reasonable representation of the main wholesaling sectors; a larger representation was given to the grocery sector, having regard to its known importance in other areas of the inquiry. The turnover in 1978 of the responding companies of £594·6 million (see paragraph 4) approximately represented about 22 per cent of the turnover

of the wholesale grocery trade in that year exclusive of catering[1]. We also estimated that the cash-and-carry turnover of the responding companies of £491·7 million represented about 35 per cent of the cash-and-carry trade in that year exclusive of catering.[2]

**Sales to retailers by wholesalers replying to the questionnaire**

6. The value of sales to retailers by traditional wholesaling and through cash-and-carry outlets and the approximate value of sales to voluntary group members are summarised in Table 5. The weighted average gross and net margins on these various types of sales are also summarised in the Annex.

**Prices and discounts**

7. Apart from the cash-and-carry operators the majority of the companies issued price lists. In the case of companies serving voluntary groups these generally took the form of a PLOF (Price List and Order Form) and, although the same list was common to all customers, only voluntary group customers received the benefit of special promotions. The position for each wholesaling sector was as follows.

*Grocery*

(1) Discounts were sometimes associated with purchases of specific products but often related to purchases of a range of products. Some companies gave a discount based on value, some a discount based on quantity and others published terms which combined both systems. There was usually a scale of discounts increasing with the value or quantity of goods but some companies operated a scale of surcharges increasing as the value of orders declined. A number of companies specified minimum drop sizes and some related the discount scale to the quantity to be delivered to one address at one time.

(2) The majority of companies granted some form of rebate, most frequently paid on a quarterly basis but sometimes monthly or even annually. It might also be tied to particular products: for example, a specific annual rebate might be paid on one product subject to a specified minimum annual purchase and on another product an annual rebate might be paid which was determined by the average value of the weekly purchases. The quarterly rebate paid by many companies was not usually tied to particular products. The various companies calculated the rebate in widely different ways. Some systems were complex and others simple,

[1] The Institute of Grocery Distribution estimated that the relevant turnover of the wholesale grocery trade in 1976 was £2,200 million. On the assumption that this turnover increased in the two following years by 12 per cent and 8 per cent respectively (an assumption which the IGD regard as reasonable) the turnover for 1978 would be £2,660 million.

[2] The Economist Intelligence Unit Ltd, in a report of December 1980, estimated that in 1978 the turnover of the cash-and-carry sector of the grocery trade was £1,960 million. However, this figure would clearly include the catering sector since EIU figures for 1976 were similar to those produced by the Institute of Grocery Distribution and the IGD figures were known to include catering. If the catering element were deleted the estimate for 1978 would be reduced to £1,410 million.

the rates ranging from a minimum of about 1·0 per cent to a maximum of 4½ per cent and the purchase qualification, for the minimum rate provided, ranged from £1,300 to £3,300. Similarly, to secure the maximum rate of rebate (which in itself varied quite considerably) it was necessary to place orders which could range in value from £13,000 to over £40,000 according to the company.

(3) Some companies told us that they used the discount structure to encourage the placing of large individual orders and a general increase in their sales. Some said that the price and discount structures were related to differences in the costs of administration and distribution when dealing with orders of various sizes but no company[1] appeared either to have measured the actual cost savings which could be achieved or to consider that the measurement of cost savings was practicable.

*Pharmaceutical*

(1) In this sector RPM was permitted for certain ethical products and proprietary medicines. Price lists were issued by some companies but generally there was considerable reliance on manufacturers' trade lists. Quantity discounts were commonly granted for non-RPM goods, sometimes related to quantities delivered to one address at one time, and they were often a reflection of favourable terms granted by manufacturers. Monthly rebates were also granted in certain instances.

(2) Although discounts were a feature of trading they were much less significant than in the grocery sector and this appeared to be a reflection of traditional trading methods in the pharmaceutical sector. Some attempt had been made to measure the cost savings which could be achieved but measurement was not generally regarded as practicable.

*Drink, Tobacco and Confectionery*

(1) Discounts and rebates were a common feature of this sector and were generally related to the quantity to be delivered to one address at one time. They were also, particularly in the case of cigarettes, based on the quantity of goods purchased and typically ranged from 15p per 1,000 for quarterly deliveries of 5,000 cigarettes to 72p per 1,000 for deliveries of over 30,000 cigarettes. A surcharge system was also operated, as in the grocery sector. Another common feature in the price structure of some companies was that the granting of discounts depended on the observance of credit terms.

(2) When fixing terms some companies took account of savings which could be made in administration and in the handling and distribution of goods. However, no company appeared to have measured the actual cost savings which could be achieved and only one thought this would be in any way practicable.

*Miscellaneous*

(1) All but one of these respondents issued price lists and granted favourable terms for larger quantities. The terms generally depended on the quantity

[1] Not every company replied to our questions on this subject.

to be delivered to one address at one time or the quantity expected to be ordered during a period; they were sometimes linked to a minimum order quantity and were often made available as part of promotional campaigns.

(2) The discount structure was used by some companies to stimulate an increase in their turnover but account was also taken of savings which could be made in the costs of administration and distribution. No company appeared to have measured the cost savings which could be achieved and the majority did not consider that the measurement of cost savings was practicable.

8. The arrangements in respect of prompt settlement discounts applied only to those companies which did not operate solely as cash-and-carry operators. The position for each wholesaling sector was as follows.

*Grocery*

Terms generally required settlement within seven days. Discount for prompt payment was not a common feature but some companies reduced the quarterly rebate for slow payers or increased it for prompt settlement.

*Pharmaceutical*

Terms generally required settlement within 30 days but sometimes a longer period was allowed. Some companies imposed penalties on slow payers, such as forfeiture of any rebate.

*Drink, Tobacco and Confectionery*

Terms generally required settlement within a fixed period. Some companies gave prompt payment discounts of up to 1 per cent but there was also provision for the loss of normal discount if payment terms were not observed.

*Miscellaneous*

The majority of companies required settlement within 30 days. Prompt settlement discounts, which were sometimes higher for voluntary group customers, were also a common feature and were generally about 2½ per cent, although they could be as high as 12½ per cent.

**Changes in discount structures**

9. Companies were asked whether discount structures in traditional wholesaling had changed materially in recent years and, if so, the nature of the changes. The majority replied in the negative. Two companies stated that there had been a move away from discounting in favour of charging net prices: on the other hand two companies felt that the trend was towards higher discounts. In the pharmaceutical sector there were indications of changing structures in that certain products were now made available at discounted or promotional prices but that other products were sold at reduced discounts or with shorter periods of credit.

**Special arrangements**

10. The companies were asked whether they negotiated with their retail customers special terms (listed at Q.9(a) of the questionnaire at Annex A) outside those contained in the price list and not known or available to their customers generally. Fifteen companies answered in the affirmative, the majority of the terms being either special prices or discounts or special promotions. Eight of these companies put a value on the special terms, but in the majority of cases the cost of the terms was less than one-half per cent of the value of the sales and terms taken together, and in no case was it greater than 3·6 per cent. Six of the companies negotiated special terms with their five largest retail customers and five were able to put a value on the terms: in no case did the cost of the terms exceed 0·7 per cent of the value of the sales and terms taken together.

11. The companies were also asked what proportion of their sales to retail customers was on special terms and whether this proportion had changed over the past five years. Ten companies responded to this question and the average proportion was just under 30 per cent but within a range from 5 per cent to 60 per cent. Six of the companies indicated that the proportion of sales on special terms had increased over the past five years and none stated that it had decreased.

12. Only one company indicated that it was practicable to measure any cost savings which might be related to the granting of special terms and there was no indication that any company had actually undertaken a measurement exercise. The companies mentioned the following factors as being relevant to a decision on whether to grant special terms:

(i) quantity ordered;
(ii) price;
(iii) competitive situation;
(iv) size of drop and number of delivery points;
(v) 'status' of customer and cost of operating the account.

**Voluntary group wholesalers**

13. Twelve[1] companies belonged to voluntary groups. All but one indicated that there was no difference in the terms on which they bought from suppliers as between purchases made on behalf of group members and purchases made for resale to other customers. Nine companies stated that they received better terms from suppliers as a consequence of their membership of a voluntary group than they would otherwise obtain. The reasons given were that a group could guarantee a market for a supplier, had greater bargaining or buying power than an individual purchaser and assured a supplier of increased production volume.

14. The companies were also asked whether the prices which they charged to group members were significantly different from those which were charged

[1] Excluding the confectionery company referred to in paragraph 1. For further information about voluntary groups, see Appendix 16.

to non-member customers. Two companies indicated that there was no difference. All but one of the remaining replies stated that prices to group members were lower than to non-member customers; some indicated that this was a reflection of such things as group promotions, a shorter range, reduced frequency of deliveries or shorter credit terms.

15. Finally, group wholesalers were asked what were the main advantages to them and to their customers of voluntary group membership. The following is a summary of the replies received in order of frequency.

(i) group advertising and promotions;
(ii) group 'own label' products;
(iii) competitive buying facilities and group discounts;
(iv) ability to compete with the multiples;
(v) group 'loyalty';
(vi) regular volume of business;
(vii) improved administration;
(viii) shop fascias.

**Cash-and-carry wholesalers**

16. Three companies belonged to a cash-and-carry group. Two of the companies indicated that there was no difference in the terms on which they bought from suppliers as between purchases made for resale through cash-and-carry outlets and purchases made for resale to other customers. Two companies stated that they got better terms from suppliers as a consequence of their membership of a cash-and-carry group than they would otherwise obtain. The reason given for this was that a group had greater buying power.

**'Own label' products**

17. The companies were asked to state whether they sold 'own label' goods other than those ordered through any voluntary group to which the company might belong, to identify the 'labels' and goods and to give their reasons for stocking 'own label' products. Twelve companies replied in the affirmative and five were in the grocery sector. The replies indicated that wholesalers generally expected to buy 'own label' goods at a lower price than the comparable national brand and so could sell more competitively and with the benefit of a higher gross margin. This enabled their retail customers to compete with the multiples and the existence of an exclusive product which was specific to the independent retailer, but not in direct price competition with a national brand, fostered retailer loyalty to the wholesaler.

18. Finally, companies were asked whether wholesalers were able to purchase on comparable terms to those obtained by the large multiple retailers and, if not, the reasons for their inability to do so. Twenty-seven companies answered this question, seven indicating that wholesalers could purchase on comparable terms; of these companies one was in the grocery sector, three in the drink, tobacco and confectionery sector, and three in the miscellaneous sector. Twenty replied that, to a greater or lesser degree, they could not.

The following table shows the reasons given by the companies in the various wholesaling sectors. Where a figure is shown in brackets this is the number of companies in the sector which put forward that particular reason. The 'drop shipment' problem was a reference to the alleged ability of some multiples to purchase on the same or better terms as wholesalers for smaller individual drops.

TABLE 4

| *Sector* | *Reasons for inability of wholesalers to compete with large multiple retailers* |
|---|---|
| Grocery | A. 'Drop shipment' problem (7) |
| | B. Multiples put pressure on manufacturers and bought at special prices (4) |
| | C. Manufacturers gave merchandising assistance to multiples |
| | D. Multiple retailers were too big |
| | E. Fragmented buying power of wholesalers |
| | F. Wholesalers could not dictate the retail selling price |
| Pharmaceutical | A. Wholesalers could not guarantee sales (3) |
| | B. Manufacturers gave merchandising assistance to multiples |
| | C. Some multiples took delivery to a central warehouse |
| | D. On some products manufacturers negotiated with retailers and ensured that their branded products were supplied against generic prescriptions |
| Drink, Tobacco and Confectionery | A. Special concessions to large retailers by some manufacturers |
| | B. System of matched price cuts on cigarettes by manufacturers and retailers |
| Miscellaneous | A. Multiples used advertising and other means which were not related to costs in order to promote products |
| | B. Volume of buying |

TABLE 5 **Value of sales to retailers** *(paragraph 6)*

| | *Wholesaling sector* | | | |
|---|---|---|---|---|
| | *Grocery* | *Pharma-ceutical* | *Drink Tobacco and Confectionery* | *Miscellaneous* |
| 1. *By traditional wholesaling* | | | | |
| Number of companies | 8 | 4 | 5 | 4 |
| £'000 | 102,802 | 132,591 | 238,977 | 148,439 |
| Margins (%) *Gross* | 6·9 * | 13·6 | 1·8 | 6·2 |
| Margins (%) *Net* | 1·0 | 3·7 | 1·2 | 2·1 |
| 2. *Through cash-and-carry outlets* | | | | |
| Number of companies | 8 | — | 3 | N/A |
| £'000 | 491,716 | — | 11,860 | N/A |
| Margins (%) *Gross* | 5·5 | — | 3·0 | N/A |
| Margins (%) *Net* | 1·7 | — | 0·9 | N/A |
| 3. *Sales by traditional wholesaling made to voluntary group members* | | | | |
| Number of companies | 6 | N/A | — | 3 |
| £'000 | 95,087 | N/A | — | 4,260 |
| Margins (%) *Gross* | 6·7 | N/A | — | N/A |
| Margins (%) *Net* | 1·1 | N/A | — | N/A |

*Notes:* 'N/A' means not available or not stated.

* If the sales of one untypical company were excluded the gross and net margins would be 8·5 per cent and 1·2 per cent respectively.

ANNEX A

## Questionnaire to Wholesalers

1. Do you sell goods to the retail trade (ie to customers with a substantial retailing activity)?

IF NOT, PLEASE DISREGARD THE REMAINDER OF THIS QUESTIONNAIRE.

2. Please supply a copy of your latest annual report and accounts and state:

(*a*) whether your wholesale business operates within a group of companies having activities other than wholesaling and, if so, what are the other activities of the group;

(*b*) your main type of operation, eg voluntary group (ie a group of distributors acting on behalf of or in association with retailers), cash-and-carry, traditional wholesale: if you belong to one more voluntary groups or cash-and-carry groups, please state which;

(*c*) which of the following broad product categories you sell to retailers other than through cash-and-carry outlets: please list or mark the first three in order of importance:

(i) groceries and provisions;

(ii) clothing and footwear;

(iii) electrical goods and radio;

(iv) pharmaceutical (including toiletries);

(v) hardware;

(vi) cigarettes and tobacco;

(vii) wines and spirits;

(viii) other (please specify).

(*d*) as shown in your accounts for 1978 (or nearest convenient financial year):

(i) the *total* value (excluding VAT) of your sales to retailers other than through cash-and-carry outlets and your gross and net margins on these sales;

(ii) the value (excluding VAT) of your sales through cash-and-carry outlets and your gross and net margins on these sales;

(iii) if belonging to a voluntary group, the proportion of your sales to retailers that is sold to voluntary group members and your gross and net margins on these sales;

(*e*) for 1978 (or nearest convenient financial year) the value in total of your sales, other than through cash-and-carry outlets, to your five largest retail customers and (if readily available) your estimated net margin on these sales.

3. Do you have a trade price list or lists for issue to your retail customers? Do you have a different price list for members of any voluntary group served by your company? Please supply a copy of each of your current lists.

4. If you do not issue a price list or lists how is the price at which a sale is made determined?

5. Do you give more favourable terms for larger quantities? If so, please describe how you do this. Please explain whether the terms given depend on:

(*a*) the quantity to be delivered to one address at one time;

(*b*) the total quantity ordered irrespective of the delivery instructions;

(*c*) the total quantity expected to be ordered by the customer during a period;

(*d*) some other quantity (please specify).

6. (*a*) What factors do you take into account when deciding what terms to give for larger quantities? Please list those factors which relate to cost savings and say whether you have undertaken any measurement of cost savings.

(*b*) Is it, in your view, practicable to measure the cost savings which arise?

7. Do you stipulate payment within a fixed period? What discounts, if any, do you give for prompt payment? Do the same conditions apply to all customers, and are they uniformly enforced? If not, in what circumstances are they not enforced?

8. Have discount structures in traditional wholesaling changed materially in recent years? If so, what has been the nature of the changes?

**Special arrangements**

9. Does your company negotiate with any of its retail customers special terms outside those contained in the price list (if any) and not known or not available to its customers generally? If so, please state:

(*a*) which of the following special terms is applicable to your company:

(i) special prices or discounts;

(ii) retrospective rebates or overriders;

(iii) special promotions;

(iv) contributions to retailers' advertising;

(v) provision of shop equipment;

(vi) a shelf filling or price marking service;

(vii) provision of sales staff at your expense;

(viii) a privileged delivery service;

(ix) special credit facilities or loans;

(x) any other special benefit or service (please specify).

(*b*) of those special terms that are applicable, what was the approximate cost of each to your company in 1978 (or nearest financial year)?

10. Does your company negotiate with any of its five largest retail customers of which sales particulars are requested in Q.2(*d*)(iv) any of special terms mentioned in Q.9? If so, please state the approximate total cost to your company of these special terms in 1978 (or nearest financial year); if one or more of these customers were not members of a voluntary group served by your company please show separately in addition the cost, in total, of the special terms negotiated with these customers.

11. (*a*) What factors do you take into account when giving special terms? Please list those that relate to cost savings and say whether you have undertaken any measurement of cost savings.

(*b*) Is it, in your view, practicable to measure the cost savings which arise?

12. What proportion, approximately, of your sales to retail customers was on special terms? Has this proportion changed over the past five years?

QUESTIONS 13 AND 14 APPLY ONLY IF YOUR COMPANY IS A MEMBER OF A VOLUNTARY GROUP.

13. (*a*) Do the terms on which you buy from individual suppliers differ as between purchases made on behalf of voluntary group members and purchases made for resale to your other customers?

(*b*) Do you sell to voluntary group members at prices different from those which you charge to non-member customers? If so, are the prices charged to voluntary group members generally higher or lower than those charged to non-member customers, and are the differences significant?

(*c*) Do you consider that you obtain better terms from your suppliers as a consequence of your membership of a voluntary group than you would otherwise obtain? If so, what are the reasons?

14. What are the main advantages (*a*) to you and (*b*) to your customers of voluntary group membership?

QUESTIONS 15 AND 16 APPLY ONLY IF YOUR COMPANY IS A MEMBER OF A CASH-AND-CARRY GROUP

15. Do you consider that you obtain better terms from your suppliers as a consequence of your membership of a cash-and-carry group than you would otherwise obtain? If so, what are the reasons?

16. Do the terms on which you buy from individual suppliers differ as between purchases made for resale through your cash-and-carry outlets and purchases made for resale to your other customers? If so, how significant are any such differences?

**General**

17. Do you sell 'own label' goods other than those which are ordered through any voluntary group to which your company belongs? If so, please identify the 'labels' and the goods to which they relate, and give your reasons for stocking 'own label' goods.

18. Do you consider that wholesalers are able to purchase on terms comparable with those that are obtained by the large multiple retailers? If not, why in your view are they unable to do so?

## APPENDIX 8

*(referred to in paragraphs 5.3, 5.6, 5.7, 5.8)*

# Manufacturers' evidence on the costs of supplying different customers

1. As part of the Commission's product surveys[1] manufacturers were asked about the extent of any studies they had undertaken to ascertain differences in their costs of supplying different customers.

2. Seven of the companies in answer to the first questionnaire said that the more favourable terms given for large quantities were based partly or wholly in cost savings studies, as follows:

TABLE 1

| *Product* | *Number of replies* | *Number whose terms were based partly or wholly on a cost savings exercise* |
|---|---|---|
| Paper handkerchiefs | 3 | 1 |
| Dentrifice | 7 | 3 |
| Baked beans | 3 | 1 |
| Ladies fine-gauge hosiery | 11 | 2 |
| | 24 | 7 |

Discussions were held with the seven companies concerned which revealed that in nearly every case only a limited number of factors relating to cost savings had been taken into account. The exercises referred to had taken various forms and had been prepared with varying degrees of approximation and frequency. In three cases only one exercise had been carried out, for which no information was available. With one possible exception, cost related terms were not applied uniformly even where cost savings studies had been made. Some of the remaining 17 companies may have carried out cost savings studies, but, if so, did not take account of them in their pricing.

3. The second questionnaire contained the following questions regarding cost savings:

(*a*) What factors are taken into account when deciding the terms to give for larger quantities? Please list those factors which relate to cost savings and say whether you have undertaken any measurement of cost savings.

(*b*) Is it in your view practicable to measure the cost savings which arise?

Replies were received from 51 companies of whom about one-third had carried out some form of cost savings measurement. However, most of the

[1] See Appendix 5

exercises referred to were limited in scope and not necessarily related to the company's discount structure. Rather more than one-half of the total respondents thought it practicable to measure cost savings but nearly all expressed reservations as to the degree of accuracy or completeness that could be reasonably achieved by such studies. The following table analyses the answers given by type of product.

TABLE 2

| Products | Number of suppliers who: (a) replied to the questionnaire | (b) undertook cost savings exercise | (c) said it was practicable to carry out cost savings exercises |
|---|---|---|---|
| Bread | 7 | 2 | 2 |
| Flour confectionery | 13 | 3 | 4 |
| Biscuits | 10 | 4 | 7 |
| Canned beer | 6 | 2 | 6 |
| Cigarettes | 4 | 4 | 4 |
| Decorative paint | 10 | 1 | 4 |
| Refrigerators | 6 | 3 | 4 |

*Notes:*
Respondents to the questionnaire who did not answer the questions on cost savings have been excluded from this table. Answers by some respondents appear under more than one heading since most bread manufacturers and some biscuit manufacturers also supply flour confectionery.

4. The foregoing table shows that the proportion of manufacturers who undertook cost savings exercises varied considerably by type of product. This may reflect the fact that the amount of cost savings to be derived from supplying large quantities may depend on factors such as the relationship of size or weight of the product to its value, the product mix, fragility, etc. All four tobacco manufacturers carried out relevant costings, partly to demonstrate to tobacco wholesalers the fairness of the manufacturers' case rate discount structure. Many suppliers felt that the value and growth potential of their larger customers and the possible fall in production if repeat business was lost or could not be replaced were overriding considerations in determining discount allowances, particularly in fields in which there was excess production capacity.

5. The following table lists the most commonly mentioned factors given in reply to question (*a*) in paragraph 3 above. The items are not listed in order of their importance to individual manufacturers but according to the proportion of suppliers who mentioned them.

TABLE 3

| *Factors taken into account* | *Percentage* |
|---|---|
| (*a*) Total business with customer | 61 |
| (*b*) Utilisation of available production facilities | 37 |
| (*c*) Sales force economies | 31 |
| (*d*) Order processing economies | 22 |
| (*e*) Order assembly in warehouse economies | 37 |
| (*f*) Economies from full bulk load delivery ex factory | 51 |
| (*g*) Radial delivery economies | 69 |
| (*h*) Administration overheads | 18 |
| (*i*) Credit facilities | 6 |

6. Discussions were held with 22 manufacturers. These included the seven companies referred to in paragraph 2 and comprised at least two suppliers for each product. The purpose was to identify suitable methods that had been found to measure the cost saving considerations each company had described, the degree of precision achieved, and the extent to which they were reflected in pricing.

7. Most, if not all, of the companies concerned had evolved budgetary control systems which measured in considerable detail and at frequent intervals the costs of each production and overhead division within the company. However, none of these systems provided information in a standard form suitable for measuring cost differences arising from large quantities. It was said that the benefits associated with large orders were unique in each case, often highly subjective, and could not be anticipated in a routine system, however well designed. For example where an opportunity arose to supply a new customer, this could have a considerable effect on the existing pattern of costs; particularly distribution. Cost savings might however be directly identifiable where a separate manufacturing unit was used solely to provide a customer's orders, or part of the supplier's service was not provided. This could include a full bulk load delivery from the factory to a customer's central warehouse, thereby excluding use of the supplier's radial distribution system. Without exception the relevant cost exercises referred to by suppliers were of an *ad hoc* nature and often prepared by outside management consultants because of limited internal company resources. The calculations had usually been undertaken on only one or perhaps two occasions.

8. Only one of the 22 companies examined in depth a full range of variable factors associated with the differences arising in costs of supply of various sized orders. This exercise dealt with overhead expenses and used extensive internal management services resources, including a special computer programme developed over a number of years. An overall analysis was made of the extent to which customers' orders varied in size and product range. The number, nature and location of outlets served for each customer was also examined. This information was then applied to each of the following expense categories:

(*a*) Selling: the cost of sales and supporting staff was time-allocated to customers depending on whether the account was handled centrally by management or senior staff or by separate calls to each location (the company preferred salesmen to visit individual stores owned by multiples to help with merchandising and maintain a marketing presence and this cost was taken into account).

(*b*) Warehousing: work study methods used to allocate warehouse labour and handling costs to various order sizes taking into account the degree of bulk splitting required.

(*c*) Transport: work study and operational research techniques used to optimise delivery procedures and measure the cost of variable factors, such as drop shipment size, type of delivery and location thereof.

(*d*) Administration: broad analysis of time spent by staff processing various types of customers' accounts so as to provide an average cost per order, outlet and customer account.

The exercise is carried out at 15 month intervals.

9. Many of the other exercises referred to by manufacturers comprised an annual analysis of the profitability of business undertaken with each of the company's larger customers. Such statements assessed the more important cost savings assumed to have been derived in each case, for example from full bulk load deliveries or centralised sales negotiations. They also quantified to a varying degree any special terms allowed to individual customers, namely special discounts including overriders, promotional benefits or the use of merchandising staff. The purpose of these exercises was not to provide a cost related discount structure but to give management useful information when renegotiating terms with customers.

10. The following paragraphs outline typical considerations and difficulties expressed by several large companies in determining cost related terms.

**Distribution costs**

11. Distribution, taken as including factory or regional warehousing and delivery services, was described by many suppliers as the obvious and most important area in which differences in costs of supply arose, particularly where a national distribution service was provided. It was cheaper to deliver a standard limited product range to one delivery point than a number of small shipments to a variety of customers, although by how much could depend to a great extent on the type of product. Most manufacturers however adopted a uniform pricing policy and made no allowance for the distance from factory or depot to the customer's premises.

12. A prime consideration was that much of the distribution service (even including labour) was looked upon as a fixed cost and could not be altered in the short-term. The aim was to make the most use of the service it had provided. The actual cost of supply to each customer would vary according to the number who made use of the system. Terms agreed with a customer, or embodied in published case rates, were therefore based on planned results and could only be approximate.

13. A large distribution system could handle a wide range of products for varying types of outlet. The overall cost could normally be ascertained with reasonable accuracy and could also be analysed to individual operations, such as warehouse handling, the bulk delivery of goods from factory to depot, and the cost of vehicle radial deliveries. The cost of individual journeys or regular route patterns could also be measured, but only on a much broader basis because this required an arbitrary allocation of many of the expenses involved. However it was often difficult to predict the amount of delivery work that would be undertaken and the effect that variations in activity might make.

14. To go further and attempt to cost individual deliveries or types of delivery appeared to present considerable difficulties if more than a rough relationship was required. Each drop shipment was unique in terms of size, product mix, distance from factory, or value to a particular route pattern. Detailed work study analysis of each delivery operation was necessary to identify the average time spent in handling different types and sizes of orders.

15. The point was made that the distribution pattern could easily be upset, for example, if a large customer ceased to trade with the supplier and could not be replaced. If, as would be the likely result, distribution costs remained unaltered, the same cost would have to be spread over fewer deliveries, even though the characteristics of the remaining deliveries would not have changed.

16. Manufacturers also pointed out that they would normally accommodate a large customer's request for special handling arrangements, such as delivery on pallets or packed in cages. This might speed up the time in which a vehicle could be off-loaded, but if the method did not conform to the established handling system it could cause the order assembly to be more time-consuming and, in the latter case, would involve poorer utilisation of space within each delivery vehicle. On the other hand, were palletised or caged deliveries to become the method generally preferred by customers, it would be likely to become economically worthwhile to change the loading system. This could then make a significant difference to the cost savings characteristics of larger orders.

17. The distance of each delivery from the source of supply was an important consideration. It was thought that some account ought to be taken of the time and cost involved in additional mileage, but there was uncertainty as to how the true effect could be measured since most deliveries were interdependent.

18. An important factor was the turn-round time taken by a driver to off-load an order at the point of delivery. The relative savings from delivering larger quantities could easily be offset if handling delays occurred, or conversely, if a measure of assistance was given by the receiver of a small order. This was said to be an unpredictable factor.

19. It was thought other factors than drop shipment size might vary the cost of each delivery. Additional deliveries might allow the suppliers to make better route scheduling arrangements or help to overcome seasonal variations in the number of deliveries required.

20. It was said that real costs for individual types of delivery could not be isolated and the best that could be done was to arrive at average costs in average circumstances that bore a rough relationship to differences in costs of supply. The degree of approximation was due to the large number of interdependent variable factors to be considered and the difficulty in quantifying certain of the benefits.

21. One food manufacturer with a wide distribution service expressed the view that 80 per cent of distribution costs were fixed and 20 per cent variable. Bulk delivery was the most variable of his costs, because he could meet the demand upon the service by using hired vehicles. The cost of the distribution service averaged 4–5 per cent of total sales value analysed as follows:

TABLE 4

| | Percentage |
|---|---|
| Bulk delivery (including own and hired vehicles) | 32 |
| Cost of regional depots | 34 |
| Radial delivery service from depot | 28 |
| Administration, etc | 6 |
| | 100 |

This particular manufacturer calculated that the delivery cost per unit varied between 12·4p for a minimal drop shipment to 3·5p for the maximum drop shipment required, a cost differential of 3½:1. Another national manufacturer calculated that, while it cost 2·3 per cent of his average price to carry a palletised load of about 7,000 units to a central warehouse, the cost of making delivery of five units to a shop was 15·2 per cent. A food manufacturer who based his case rates on work studies charged 7 per cent less for a thousand case load than for a 10 case drop, the latter being his minimum.

22. The following table gives some examples of distribution costs expressed as a percentage of sales and shows how variable this can be for individual products:

TABLE 5

| | *From factory to regional depot* % | *From regional depot to individual shops* % | *Total* % |
|---|---|---|---|
| Biscuits and flour confectionery | 2 | 4 | 6 |
| Canned beer (incl duty) | 5 | 7½ | 12½ |
| Refrigerators | 2½ | 1½ | 4 |
| Ladies fine-gauge hosiery | — | — | 3 |

**Selling costs**

23. The use of a field sales force visiting individual outlets was recognised as a more expensive means of selling than centrally arranged negotiations by senior staff, although customers determined the selling method to be employed. A number of manufacturers prepared adequate cost exercises to differentiate between the two selling methods and also distinguished between the frequency cost of visiting each outlet ie weekly, monthly or periodically. Although one calculation showed that selling costs increased very sharply if frequent sales visits were made, companies generally considered that there were strong merchandising advantages in operating a field sales force even though they could not be quantified.

**Order processing**

24. One white goods manufacturer calculated that in 1978 an order, irrespective of size, cost £2·50 to process. This cost included administration, data processing, accounts receivable, cashier collection handling etc. A major customer placing one or two orders per month could provide relatively substantial savings.

**Total business with customer**

25. Manufacturers gave various general reasons for considering total business as a factor to be taken into account, namely growth potential, continuity of business etc. However it was thought that this was normally a matter of commercial judgment and the benefit unquantifiable.

**Granting of credit facilities**

26. An important factor often referred to was the length of time taken by a customer to settle an account. The cost of financing a delay of, say, two months could add 2 to 3 per cent to the cost of the transaction. However there was no evidence available to show that one class of customer took greater credit than another.

**Production savings**

27. Some manufacturers explained that periodically they had to vary production levels because it was impracticable to smooth seasonal demand by stockpiling or other methods. A few manufacturers said that they had measured the economy in resources obtained from undertaking further orders in off-peak periods and the savings derived were taken into account when negotiating terms in these cases.

28. Some manufacturers considered that discounts given in the fear of losing an order were cost related, in that a large order that was lost in current market conditions could not be replaced and that the fixed overheads formerly allocated to the order would necessarily have to be spread over other business, thus increasing costs.

**General**

29. Although a number of suppliers have prepared some form of cost savings exercise relevant to their own particular needs there was little uniformity in the method of preparation or its completeness and a number of different methods of cost allocation were employed. The few comprehensive studies made appeared to have required extensive resources to carry them out and for the most part were prepared by leading suppliers in their field.

APPENDIX 9

# Views of wholesalers

*(referred to in paragraphs 5.10, 8.3)*

**National Federation of Wholesale Grocers and Provision Merchants**

1. The Federation stated that the food industry was operating within a relatively static market. This had resulted in intense competition within the distributive sector and had recently been accompanied by severe financial problems. The number of wholesalers had steadily fallen over the years, partly due to amalgamations and lack of financial viability, and approximately 30 to 35 per cent of the retail trade was now handled by wholesalers, including cash-and-carry wholesalers. There had also been an improvement in the efficiency of many wholesale companies which now employed more sophisticated administrative techniques the cost of which could be justified by the size of the operation. However, the Federation emphasised that the margins available to wholesalers had fallen: gross margins were generally no higher than 7 per cent and net margins were very low. Competition between wholesalers was considerable and the larger companies were increasing their share of the market. Many of these larger companies were also part of organisations which had other interests, in manufacturing or in retailing: generally, however, it was the Federation's experience that these other activities did not produce any conflict of interest as the wholesaling operation was usually conducted quite independently of the other areas in which such a conglomerate organisation might operate.

2. In the retail area the main feature had been the growth of the large multiple retailers and the emergence of superstores and hypermarkets in out-of-town locations. These larger stores were diversified in their operation and were generally looking for an increasing range of non-food items on which a higher profit margin could be obtained. The larger operators were seeking to increase their share of the market in two ways: by cutting prices to their customers and by putting pressure on their suppliers to obtain more favourable terms and in this they were generally successful by virtue of their size. The multiples were in a stronger position than wholesalers in their dealings with manufacturers. They were able to exert buying pressure and part of their success was due to the implied threat, which had sometimes been carried out, not to stock a particular manufacturer's brand or not to run a promotion.

3. The growth of the multiples had been accompanied by a decline in the market share of the independents but it was necessary to consider the particular geographical area in which any group of independents operated. Although they were under pressure from the multiples other factors were also at work, such as urbanisation and out-of-town development schemes. It was difficult to give an exact definition of the term 'independent' and it was not necessarily synonymous with the small shop. Despite competitive pressures the small shop had demonstrated that it had an ability to survive and this was in part due to the fact that the present situation gave some opportunities to the independent who could give personal service and some degree of specialisation. However, it was also true that supermarkets sold goods which had previously

been regarded as the preserve of the specialist. Buying skills required for the majority of products were similar and the opportunities to survive by offering specialist service were limited. A grocer had to offer a fairly broad range of goods to remain in business and the best way forward, in the view of the Federation, was for the wholesaler and the smaller retailer to make common cause through the voluntary group movement. A greater degree of co-operation within voluntary groups was required to achieve economies and sell goods more competitively to the customer. More specifically it would assist the independent retailer to survive if he was prepared to buy a greater proportion of goods from one wholesaler and so reduce his own operating costs. Wholesalers had a particular interest in the survival of independents who represented a large part of the market both for delivered wholesaling and for cash-and-carry operations.

4. Cash-and carry wholesaling had increased considerably in recent years and by 1980 represented about half of the total wholesale market. It was attractive to the wholesaler because it was essentially a cost cutting operation and enabled him to sell products more cheaply. For this reason it was also attractive to the independent retailer and had enabled him at certain times, such as that of the lorry drivers' strike, to have a competitive edge over the multiples. However, it should be borne in mind that the retailer had to bear the cost of collection himself even if the majority of retailers did not actually calculate the cost.

5. 'Own label' brands were a growing feature of the market. They had arisen to counter the strength of manufacturers who supplied their own national brands and were used by multiples, individual wholesalers and retailers in voluntary groups. They were particularly useful to voluntary group retailers as they fostered a national image which could be recognised by the consumer and, in the absence of high marketing costs (as in the case of national brands), were cheaper.

*Pricing*

6. Discriminatory pricing was one factor which had contributed to the changing structure of the retail trade. As the total size of multiples increased, they had been able to exert pressure on suppliers to secure more favourable quantity rates regardless of the size of the drop. This advantage had been used to finance a 'retail price war' and so had accelerated the concentration of retail outlets.

7. Wholesalers themselves offered discounts to their customers. Usually these were related to the economics of delivery size in that larger drops were cheaper to handle than numerous small drops. Sometimes, however, they were linked with national promotions or with voluntary group promotions and as such they were offered as part of the general competitive situation.

8. The Federation stated that it was very concerned about what was termed the 'drop shipment problem'. The pricing structure of many manufacturers apparently gave higher discounts for larger deliveries and the Federation had

no complaint about that because it was recognised that there were economies to be achieved by delivering in this way. However, some manufacturers supplied branches of large multiples with small drops but nevertheless charged the price appropriate to a large drop. This produced the situation where some multiples and discount houses were able to sell at prices below those at which wholesalers could buy. The Federation had held discussions with manufacturers to present the wholesaling case for more equitable treatment but it was evident that, although pressure exerted by large buyers was strong, some manufacturers saw advantages in making small drop shipments, in particular welcoming the opportunity to secure the presence of their representatives at the point of sale and to influence the allocation of shelf space. The discussions had not produced a solution. The Federation thought that a wholesaling function had to be undertaken and should be recognised by the manufacturers. If a multiple retailer was able to take large drops, the Federation did not object to that retailer being granted the same terms as a wholesaler since the retailer was fulfilling the wholesale function. The objection was to discriminatory pricing in favour of customers who did not carry out the wholesale function to the detriment of the Federation's members who did. This was particularly objectionable since small drops by the manufacturers were more costly than normal wholesaling and the extra cost had to be paid for at the expense of the wholesalers and the customers whom they served.

*Remedies for discrimination*

9. The Federation stated that its main concern was with the drop shipment problem and the fact that many manufacturers did not adhere to their published terms. It was difficult to imagine that legislative remedies would be appropriate. Negotiation within the trade was more likely to produce a solution and legislation was regarded as a last resort.

**Wholesale Grocers' Association of Scotland**

10. Approximately 60 to 65 per cent of the independent retail trade was handled by wholesalers. This generally ensured a wider, more frequent and more economical distribution of products. There were now fewer wholesale companies and margins and stock turnover were both decreasing. The erosion of profits deprived companies of the necessary funds to develop and consolidate their operations. Independent retailers were assisted by the voluntary groups to which many belonged in meeting competition from their larger rivals.

*Pricing*

11. Wholesalers generally traded on equal terms with all their customers but in some instances more favourable terms were offered which were related to drop size. Manufacturers were sometimes alleged to offer more favourable terms to large retailers but evidence of this was difficult to secure. It was known, however, that they performed other services, such as shelf filling, at what must be considerable expense. Generally there was a high level of competition between the various sections of the retail trade and this was reflected in competitive prices.

*Remedies for discrimination*

12. The Association believed that legislation to require the disclosure of discounts and other benefits would be impossible to operate. A voluntary code of practice might, however, be beneficial.

**The Wholesale Tobacco Trade Association**

13. The market for tobacco products had been steadily declining over recent years. There was a strong tradition of direct dealing between manufacturers and retailers and only 30 per cent of the trade passed through the hands of wholesalers: this proportion was also steadily declining. The number of wholesalers was also declining and many inefficient companies had ceased to trade: this was apparent from the membership of the Association which had fallen from about 450 in 1968 to about 180 in 1980. Recent studies showed that many wholesalers achieved a net profit margin of less than 1 per cent, which was insufficient for any additional capital requirements. The Association maintained that the present state of the industry, where power rested with a few oligopolistic manufacturers, was unsatisfactory.

14. The emphasis by manufacturers on maintaining direct contact with the retail trade had resulted in some general trading inefficiencies, such as the maintenance of a sales force by both manufacturers and wholesalers to cover the same retailing areas and more than one carrier calling at each outlet. Additionally there had not been any move towards the formation of voluntary groups as in the grocery trade and the Association stated that there was no need for this particular kind of trading activity.

*Pricing*

15. The main feature of the pricing structure was that of discounts related to quantities purchased. Both manufacturers' price lists and details of the discount structure were freely available. Some wholesalers used the same structure as the manufacturers but others published their own discount rates in an attempt to compete: as a result some sales were made which allowed for only a 1 per cent gross profit margin. In addition to the published terms some manufacturers also offered special terms, often in the form of special promotions, to certain multiple retailers. One method was that of matched price cuts where the manufacturer and retailer entered into an agreement to share equally the cost of cutting prices: this no longer operated but the Association believed that at one time about 45 per cent of all cigarettes were sold in this way. Other methods were the contribution of substantial amounts towards customer advertising and the provision of merchandising staff (at the manufacturer's expense) for the benefit of large retail outlets.

16. The Association was concerned that the basic discount rates were not cost related and that the quantities specified were no longer realistic, having been unchanged for many years. This operated very much to the disadvantage of the wholesaler by encouraging a retailer to buy direct from the manufacturer.

17. A further area of concern was the 'drop shipment problem' where large multiples were able to buy at the higher discount rates for deliveries to individual branches. This also operated to the disadvantage of other customers, including wholesalers, who bought at the rate appropriate to the size of delivery. The Association had discussed this particular problem with manufacturers but had been unable to secure any improvement in terms.

*Remedies for discrimination*

18. The restoration of resale price maintenance at the retail level would help to redress the balance and allow small retailers to compete on equal terms with their larger competitors. The restoration of wholesale price maintenance would not be desirable, however, as this would tend to result in a return to the inefficiencies in wholesaling which previously had obtained.

19. The view of the Association was that legislation on the lines of the Robinson-Patman Act in the United States of America would be a reasonable alternative to the restoration of resale price maintenance. It was recognised, however, that there would be considerable difficulty in implementing such legislation.

**The Wholesale Confectioners' Alliance**

20. The Alliance stated that the chocolate side of the confectionery trade was similar to the tobacco trade in that it was dominated by a few manufacturers, the majority of whom had a similar policy of selling direct to the retail trade. Special packs and point of sale advertising material were made available only to direct retail customers. Generally, the wholesaler supplied those retail outlets which were uneconomic, inconvenient or too high a credit risk from the manufacturer's point of view. It was reported that equitable distribution between the customers of a manufacturer of items in short supply was not always effected.

21. Buying groups were a feature of the trade when dealing with manufacturers of sugar confectionery and with the smaller manufacturers of chocolate, the object being to obtain better terms collectively from manufacturers and, in some instances, to offer an assurance to manufacturers that accounts would be paid by a certain date and bad debts borne by the group.

22. Since the abolition of resale price maintenance there had been concentration on all sides of the industry and there had been many business failures. Confectionery shops had fallen in number and many of these conventional outlets had been replaced by garages, off-licences and public houses stocking only a limited range of confectionery.

*Pricing*

23. The abolition of resale price maintenance had assisted the growth of the discount practice. Preferential terms, particularly on seasonal lines, and extended credit were available to large retailers but not to wholesalers. The price structure often enabled retailers to buy at wholesale prices from the major manufacturers for relatively small drops. In some instances the multiples

could sell at the same price as that paid by wholesalers and this operated to the disadvantage of independent retailers. Moreover, products were supplied to some multiples at the price at the date of ordering whereas all wholesalers were supplied at the price ruling at the date of delivery. On seasonal goods many manufacturers required wholesalers to take earlier deliveries than certain multiples.

*Remedies for discrimination*

24. The Alliance considered that many of the inequities in the present trading situation could be eradicated if the function performed by the wholesaler were recognised by the larger manufacturers. Some wholesalers had successfully negotiated better terms than those originally offered but there was a need for a special discount to be offered to wholesalers in recognition of their place as an essential link in the chain of distribution and of the additional function they performed of servicing marginal accounts and ensuring a wide distribution of confectionery products. Moreover there was a strong case for a wider differential between the price charged by manufacturers to wholesalers and that charged to retailers for direct delivery.

25. The general costs of distribution could be reduced if the services of wholesalers were used more extensively. Retailers would receive more frequent and regular deliveries which would reduce the level of stock they needed to carry and there would also be administrative savings. Retailers would be able to receive better terms because they would negotiate with wholesalers on the basis of their full buying potential. Similarly, there would be administrative savings for manufacturers and the assurance of continuity of supply to retail outlets from the stock carried by wholesalers.

**Individual wholesalers**

26. The Commission received information and comments from a number of individual wholesale companies, mainly in the grocery sector but also in other fields such as pharmaceuticals and decorating supplies. The following is a summary of the points made which were additional to those put forward by associations of wholesalers or were particularly significant to the companies concerned; it excludes any views put forward specifically in response to the questionnaire to wholesalers, details of which are summarised in Appendix 7.

27. Although there were variations according to the particular sector the general picture was one of growing concentration; this was particularly true of the grocery trade. Although it was accepted that increasing concentration was not necessarily the result of the discount practice there was concern about the decline of the independent retailer and the far-reaching social effects which might result.

28. 'Own label' goods were a feature of the competitive scene and had primarily come into existence in response to the competition which existed between national brands. Although the creation of a separate brand image

was one objective in the marketing of 'own label' goods and a distinct specification could therefore be advantageous, many brands were in fact indistinguishable from comparable national brands. Wholesalers were agreed that 'own label' goods could be purchased more cheaply than the national brands and therefore had marketing potential: the margin obtained on 'own label' products was generally higher but there were exceptions.

29. Margins had generally been squeezed throughout the distribution sector. There were variations from this general pattern, for example in the retail area of the decorating supplies trade where gross margins were traditionally high.

*Pricing*

30. Except in the decorating supplies trade where quantity discounts were not a feature of the pricing system the main area of concern was the 'drop shipment problem'. It was advanced that one effect in the grocery trade was that independents had to pay about 3 per cent more for their goods than did the multiples and that this had significant consequences for competition. Promotional discounting was not necessarily opposed but non-cost related price cutting was regarded as an unfair method of competition.

31. All the wholesalers referred to fierce competition in the distributive trades. This had resulted in a short-term price benefit to the consumer but was likely to have long-term consequences if there was an inability to generate sufficient funds for investment purposes.

*Remedies for discrimination*

32. There was no common view about the need for legislation or other remedies. All wholesalers who commented on this aspect were agreed that there were severe problems in devising and implementing any form of control.

**British Importers Confederation**[1]

33. It was the general view of the members of the Confederation that discounts were a traditional and accepted aspect of trading, reflecting the benefits of bulk buying, the expenses of promotions and the real value to suppliers of regular customers. One section of the Confederation believed that discriminatory discounts did not affect the general level of imports. Supermarkets were a permanent feature of retailing and depended on an ability to buy cheaply in bulk. Those smaller shops which survived were able to offer a greater degree of personal service albeit at higher prices.

34. It was questionable whether legislation in other countries to deal with price discrimination had brought any real benefits and it had been introduced in the USA to deal with quite a different situation to that which existed in the United Kingdom. The Confederation considered that legislation to restrict accepted discount practices was unnecessary, would be detrimental to the trading community and almost certainly result in higher prices to consumers.

[1] Included in this appendix for convenience.

## APPENDIX 10

*(referred to in paragraphs 5.17, 6.15, 6.20, 6.24, 8.3, 8.30, 9.32)*

# Views of food manufacturers

### A. Associations of manufacturers

*Federation of Bakers*

1. The Federation stated that, because of declining consumption, bread supply capacity exceeded demand. In this situation the overwhelming power of large retailers weakened manufacturers and forced some to curtail investment in future efficiency. The large buyers were now able to control or influence two-thirds of the national grocery market, and to achieve preferential discounts which were by no means wholly related to efficiency of distribution. Such discounts were inevitably reflected in the general level of prices charged to all customers, adversely affecting independent grocers who were compelled to subsidise the development of supermarkets. This was against the interests of many consumers who had to rely on local shopping facilities.

2. The Federation considered that some restraint ought to be imposed on the market power of large retailers. The public interest might suffer from the absence of effective curbs on the use of market power by large retailers to obtain favoured trading terms unrelated to objective cost criteria.

*Food and Drink Industries Council (FDIC)*

3. The FDIC, representing 18 leading trade associations in the food and drink manufacturing and processing industries, carried out a survey of the experiences of certain companies in the food and drink industries of the operation of overseas legislation to control discounts and related practices[1] and submitted a summary of its findings.

4. The Council drew the Commission's attention to a wide spectrum of views as available to its Economic Committee ranging from those who believed that the trading relationship between manufacturer and distributor should not be a matter for external control of any kind; those who were dissatisfied with the situation as it stands but had misgivings about the administration of any possible form of control; to those who would like to see specific legislation.

5. After taking into account all information available to it and the enacting of new legislation in the United Kingdom (the Competition Act), the Council proposed that the Commission should express the view that, for those sectors involved in the manufacture and sale of branded consumer goods, it would be proper for the Director General of Fair Trading to publish, after consultation with the industries involved, a set of guidelines for relations between

[1] The results of the survey were summarised in an article published in the *FDIC Bulletin* for July 1979. An account of a Fair Trading Workshop, at which delegates were addressed by expert speakers from a number of countries, was published in the *FDIC Bulletin* for November 1979. A copy of a report on the operation of the German system of semi-voluntary control of trading practices by a senior member of the FDIC secretariat was made available to the Commission. We are indebted to the Council for this assistance.

buyers and sellers to which he intended to refer when considering whether or not to investigate a possibly anti-competitive practice. Although the sanction of a possible investigation by the OFT fell short of a legal penalty, the existence of the guidelines would act as a deterrent to any person who might be inclined to behave in a contrary manner.

*Food Manufacturers' Federation*

6. The Federation carried out a survey designed to ascertain the facts concerning the provision of special terms to distributors by food manufacturers. A questionnaire was sent to 15 member companies, and a summary of the information collected was made available to the Commission.

7. The main results of the survey were as follows:

(*a*) Between 1973 and 1978 the share of turnover accounted for by the top ten customers increased from 47·4 per cent to 53·9 per cent. The majority of respondents felt that this trend had been beneficial in its effect on efficiency of distribution, salesmen and administration, but harmful in that it had 'weakened the security of the companies' production base'. Opinions were divided as to its effect on profitability.

(*b*) Special trading terms unrelated to trading economies did exist. On average, the special trading terms given for the customers listed in the questionnaire were no greater than for all customers including wholealers, but a few customers were more than 50 per cent above the average. There was only a weak relationship between the special trading terms to the customers listed and the corresponding cost economies.

(*c*) The majority of respondents had wished to change their special trading terms structure during the previous two years, but had been unable to do so because of customer power combined with competition from other manufacturers.

(*d*) Of the 15 respondents, 13 considered that some form of code of conduct or legal framework would be an acceptable or necessary means to assist changing their special trading terms structure. Opinions were divided as to whether it should be a manufacturer-sponsored code of conduct, a joint sponsored code, or have legal form. The other two respondents considered it either unnecessary to change or impossible for a code to operate effectively.

The Federation pointed out that these views should not be interpreted as being representative of those of the Federation as a whole.

### B. **Individual manufacturers**

8. Following the product surveys described in Appendix 5, additional information and views were collected, mainly by interview, from a number of manufacturers in different sectors of the food and drink industries. The evidence so obtained is summarised below as respects manufacturers of the following products:

(*a*) baked beans;

(*b*) bread and flour confectionery:

(*c*) biscuits;

(*d*) canned beer;

(*e*) other foods.

For some manufacturers the product named is only one of many products supplied, and in such cases the views expressed referred to the whole of the manufacturer's business.

*Baked beans*

9. The manufacturers said that the prevalence of the reference practice in the grocery trade was a symptom of a more deep-seated problem. This was the over-capacity in much of the food manufacturing industry, attributable to a long-term fall in consumption owing to a static and ageing population, fewer people engaged in heavy manual work, slimming etc. There were some individual growth sectors such as some frozen foods and convenience foods and demand for baked beans had also increased. In general, however, manufacturers and distributors alike were competing for shares of a market which was at best static and likely to remain so. If buying power increased, consumers would be likely to spend more on things other than food. With increasing concentration on the retailing side, manufacturers were vulnerable to pressure from the major multiples for more favourable terms. As a result, though quality standards had been maintained, manufacturers' profits had fallen and they had been forced to cut back on research and development and limit the variety of products offered. Over-capacity also encouraged competition for 'own label' business which tended to weaken manufacturers' brand names and led to market stagnation, the drying up of product innovation and reduced investment.

10. The manufacturers were asked whether they saw any special advantages in dealing with large retailers as opposed to a greater number of small retailers. Their views may be summarised as follows:

(*a*) opinions differed as to whether dealing with large retailers helped the manufacturers to plan ahead and take advantage of economies of scale. When the manufacturer was the brand leader for a particular product he was able to manufacture for stock, and it made no difference to him whether he had a few large customers or many small ones. In other cases, some manufacturers felt that dealing with large retailers gave them greater confidence in planning forward and incurring the risk of buying raw materials and working additional shifts, even though there was no guarantee that retailers would continue to buy. Other manufacturers saw greater safety in spreading the load and avoiding undue dependence on a few large customers.

(*b*) Manufacturers agreed that large retailers were not inclined to settle their accounts more rapidly than small ones, and that the average length of credit to large and small retailers was about the same. There was a lower risk of bad debts when dealing with large retailers, and debt collection costs were less.

(*c*) Selling costs, and warehouse, handling and transport costs, were less where deliveries were made to the central depot of large retailers, but manufacturers often preferred to incur the additional cost of delivery to individual branches on drop shipment terms to ensure that their products remained in stock and were properly displayed and priced.

(*d*) Manufacturers agreed that large retailers provided a more effective medium for promotions and for marketing new products.

11. There were conflicting views about the effect of the reference practice on small manufacturers. Some manufacturers felt that small firms and new entrants to the industry were in a precarious situation because of the heavy cost of building up brand loyalty, and the consequent risk of over-dependence on 'own label' business. Others contended that small manufacturers could compete by charging lower prices, though not so low as to attract more trade than they could cope with, or avoid competition by specialising in quality products.

12. It was felt that there was still a place for the efficient small retailer, particularly if he could offer services to the public which the multiples could not provide, such as extended hours of opening, personal attention and home delivery. Consumers generally had benefited from the reference practice through lower prices, although there were some exceptions, for example, the elderly and people in rural areas.

13. There was a general feeling that pressure on manufacturers had increased and would be likely to increase further, with powerful customers becoming still more powerful. Possible remedies mentioned were:

(*a*) action by industry, spurred by competition and encouraged if necessary by the Government, to eliminate excess capacity and so enable manufacturers to bargain on more equal terms with retailers; or

(*b*) direct action by the Government to compel manufacturers to sell on the same terms to all retailers.

There was some indication during the course of the inquiry of diminishing confidence in (*a*) and of a shift of opinion towards (*b*), though it was recognised that any legislation would need to be carefully framed so as to achieve its object without unduly increasing costs.

*Bread and flour confectionery*

14. Evidence and views were received from several of the larger plant bakers who supply bread and flour confectionery, and from a number of companies outside the baking industry who supply various products including flour confectionery. Bread is of special interest in the present context because of the extent of discounting and because of the Government's intervention in 1975–76 to control the level of discounts.

15. The bakers' difficulties have been much discussed and are attributed by them partly to weakness inherent in the industry itself and partly to the

impact of the changes in the structure of the retail grocery trade since the early 1960s:

(*a*) The long-term decline in bread consumption associated with rising living standards led to excess capacity, at one time exceeding demand by as much as 30 per cent, and to severe competition among suppliers. The economics of baking and of flour milling are critically dependent on plant utilisation, and there is little difference between the bread produced by different plant bakers and little brand loyalty among consumers.

(*b*) The increasing domination of the retail market by the multiples, whose share of wrapped bread sales rose from 33 per cent in 1973 to 47 per cent in 1977, and the reduction in the number of retail buying points, led to severe pressure on the bakers to grant discriminatory discounts.

16. The sequence of events since 1974, as described by the bakers, was briefly as follows:

(*a*) In April 1974 the Price Commission ordered the large retail multiples to reduce their gross margins by 10 per cent. The reaction of many was to concentrate much of the reduction on bread, and this led to severe price cutting and to pressure on the bakers for higher discounts to enable retail prices to be cut still further. The bakers responded by increasing the general level of bread prices to compensate for the higher discounts given to the multiples.

(*b*) To safeguard the bread subsidy scheme which was then in operation, and to ensure that the benefit of the subsidy was passed on to consumers, the Government intervened to fix the maximum retail price of subsidised bread and limit the amount of discount which could be given to retailers. This action brought about a period of stability in 1975 and 1976.

(*c*) At the beginning of 1977 there was a change of policy; the control of discounts was abandoned, and a price abatement system was introduced which allowed retailers to demand higher discounts as long as these were passed on to consumers in lower retail prices.

(*d*) The bakers tried to hold out against the demands of the multiples but, with increasing pressure to employ under-utilised plant, their resistance weakened towards the end of 1977 and the cost of discounts reached a new peak.

(*e*) In March 1978 Spillers-French Baking Ltd, faced with severe financial difficulties, announced its intention of withdrawing from the industry. This decision, followed by the closure of a number of bakeries, and the lead given by one of the two remaining major plant bakers in rolling back discounts to the level applying in December 1976 (immediately prior to decontrol) introduced a new period of stability.

17. The bakeries saw reason to hope that, with capacity and demand now in reasonable balance, and with the experience of the last few years fresh in their minds, a resumption of the ruinous competition in discounts could be avoided. The industry could not, however, aspire to do more than contain the extent of discriminatory discounting and, with the still continuing fall in bread consumption, the problem of excess capacity might reappear.

18. It was felt that some restraint ought to be imposed on the market power of large retailers. Discounts not related to savings in the costs of production and distribution operated against the public interest in the following respects:

(*a*) discriminatory discounts represented a shift of financial resources from manufacturer to multiple retailer which enabled the latter to expand further at the expense of the independent retailers, thus increasing his market power, while reducing the funds available to the manufacturer for investment and modernisation. This must tend in the longer-term to lower manufacturing efficiency, retard development of new products and lead to higher prices and limitation of consumer choice.

(*b*) As manufacturers had to take account of the more favourable terms demanded by large retailers in fixing list prices applicable to customers generally, independent retailers were indirectly subsidising more powerful competitors. The terms obtained by the latter were related to the overall volume of business and not to the size of their individual outlets compared with those of independent retailers, or to the comparative cost of supplying them.

(*c*) By the same token, customers dependent on small retailers subsidised those with access to branches of the national multiples.

19. Opinions differed, however, as to the nature of the remedies required. One view was that some form of fair trading legislation was needed to limit discriminatory discounts, embodying the main features of, but not slavishly following, the Robinson-Patman Act in the United States. Others felt that suppliers should be required to declare publicly their trading terms and discounts, and sell only on the published terms, but that there should be no obligation to justify the terms or to give the same terms to all customers. It was thought that imposing 'transparency' in dealing would encourage, rather than stifle, competition and would avoid the problems of enforcement associated with an outright ban on price discrimination.

*Biscuits*

20. The manufacturers stressed the highly competitive nature of the industry. The leading companies supplied approximately the same ranges of biscuits, but each was more successful in some types than in others and there was a constant struggle to hold market share in areas of strength and increase it in areas of weakness. A constant watch was kept on the relationship between capacity and prospective demand, and promotions might be planned to maintain the balance. Persistent over-capacity, as in other goods, might result in higher discounts, but it could equally depress prices generally.

21. The relationship between capacity and demand also had a bearing on the willingness of manufacturers to supply 'own label' products. Branded lines were generally regarded as the most important part of a manufacturer's business, but 'own label' contracts, like exports, were valuable as an addition to maintain a high level of plant utilisation. A further consideration was the risk and cost of introducing new brands; one manufacturer said that it cost £600,000 to launch a new brand and that annual sales had to reach £5–£6

million to justify this. Opinions differed as to the relative profitability to the manufacturer of 'own label' and branded products; some said that 'own label' products were more profitable because of the lower advertising and selling costs, while others said that there was no difference.

22. The practice of the industry was to sell on a delivered basis and to deliver direct to all types of retail outlets. The manufacturers claimed that their terms of sale, including turnover-related discounts, overriders tied to sales targets and advertising allowances, did not result in unfairness as between large and small retailers, if account was taken of the total package of discounts and allowances received at different times by each. The cost of discounts to the manufacturer had risen over the years as a percentage of turnover because more business was being done with large customers and, to the extent that this could not be absorbed by cost savings elsewhere, it necessitated higher list prices to maintain profitability. However, it was claimed that the differences between the net prices charged to large and small retailers had not increased over the trade as a whole, except possibly in certain lines to which the multiples were devoting particular attention.

23. Some concern was expressed at the increasing dominance and market power of certain large multiple retailers which might lead to pressure on manufacturers for larger discounts. This applied particularly to commodities normally bought on a weekly basis and emphasised in retailers' advertising. The fear of being undersold made retailers acutely sensitive about prices and more inclined to put pressure on suppliers. There had been a shift in the pattern of advertising over the previous three or four years; advertising by large retailers (to which the manufacturers contributed) had trebled, whereas manufacturers' own advertising had decreased.

24. Divergent opinions were expressed about the need for Government intervention. Some manufacturers saw no justification for interfering with the free play of market forces and cited instances of small manufacturers and retailers who had been able to enter the market and develop large businesses through drive, efficiency and innovation. The increasing standardisation of products such as bread and biscuits sold to the mass market had created new openings for the supply of superior and more individual products. There was no entry barrier to newcomers who could supply products which consumers wanted.

25. A manufacturer suggested that there was a case for action in connection with the disturbing tendency for individuals at various levels in certain retail organisations to solicit payment from manufacturers to facilitate the performance of agreements reached with their head offices.

26. An alternative view was that some legislation was becoming necessary to redress the balance between the largest multiples on the one hand and other retailers and suppliers on the other hand. Concentration in retailing was fuelled by discount practices and in turn stimulated them through increasing pressure on manufacturers. What was needed was a system which avoided the complexities of Robinson-Patman, did not depend unduly on the exercise

of administrative discretion, permitted flexibility in business operations and did not inhibit entrepreneurial drive. Any restriction on price discrimination should not rule out the provision of different 'packages' of discount, allowances and various forms of promotional and other assistance, to customers if their overall effect was broadly comparable. Any obligation should apply to the buyer as well as to the manufacturer, and should not entail criminal penalties.

27. A requirement that all trade terms should be published and adhered to was worth considering. Whether manufacturers should be required, in addition, to justify any departure from their standard terms by reference to cost savings was a more difficult question needing further detailed study. There would be problems in identifying and measuring the relevant costs.

*Canned beer*

28. Price was said to be a more important factor in the take-home beer business than in the on-licence trade where other considerations such as the quality and strength of the product, the personality of the licensee and the amenities provided also played a part. Canned beer represented the growth element in the take-home trade. The trade had tended to move from traditional off-licences to the grocery multiples and similar distribution chains in which the national advertising and promotion of national brands were of major importance. There was generally no excess capacity in the industry, apart from seasonal fluctuations, as sales of canned beer were growing. 'Own label' was only a small element in total sales; consumer loyalty to the established brands was strong and a number of 'own label' arrangements had fallen through, having failed to generate enough business to justify themselves.

29. The brewers claimed that they had successfully resisted growth in the rates of discounts allowed to customers, recognising that excessive discounting would militate against the maintenance of quality standards and the development of new products. Large customers were able to buy more cheaply and therefore had a price advantage over smaller, but the differences was related to the lower cost of supplying them and to other advantages seen by the brewers in dealing with large customers such as grocery multiples, including invoicing economies, benefits of higher through put, gains from national exposure on retail shelves at prominent sites, a more effective medium for launching new products and a more secure basis for planning short-term production and distribution requirements. It would be very difficult to put a precise value on all these cost savings and advantages; canned beer, for example, was commonly delivered along with other products on journeys taking in both on-trade and off-trade customers. It was therefore difficult to measure and compare the profitability of business with different customers.

30. The brewers believed in a competitive market economy and saw no necessity for any new legal or administrative measures to control discounts.

*Other foods*

31. One manufacturer said that the buying power of the large retailers was considerable and on the increase. It arose from their ability to change their

supplier or to reduce the shelf space allotted to him. If a supplier was shut out by a supermarket group, his products would effectively no longer be available to large numbers of consumers. Even if suppliers wanted to eliminate price discrimination in favour of large retail customers they did not have the power to do so.

32. This manufacturer believed that trade terms should be related to suppliers' costs and should be published. When the Commission's report had been published, and subject to its conclusions, it would be right for the Director General of Fair Trading to establish by recommendation a framework within which trade terms should be developed by individual suppliers. The new powers given to the Director General to carry out investigations (and, where necessary, to make references to the Commission) of anti-competitive practices should assist him with the establishment of such a framework and should enable him subsequently to determine whether or not trade terms fell reasonably within it. This would allow for a less rigid approach than legislative control. If non-observance became a problem, legislation could be brought into play, but any legislation would have to be unambiguous, fair and capable of enforcement.

33. Another manufacturer said that, to maintain and increase sales, trade with multiples had to be increased because this was the area of the retail trade that was growing. However, to win custom from a multiple very large discounts had to be offered to match those offered by competitors. The cost of according special discounts to major customers was steadily growing, and general trade prices had had to be raised to finance these higher discounts. With increasing sales, overall profitability on capital employed had so far been maintained, but some of the additional business gained was unprofitable and made no more than a contribution to fixed costs. It was difficult to see how further investment could be made to pay in view of the unprofitability of marginal sales. There were no clear economies in dealing with most large retailers; slow turn-round and congestion at the larger stores tended to offset economies which otherwise might arise from the usually larger size of the drop. The advantage of the large customer was only in terms of throughput at the factory. This manufacturer felt that the situation was a matter for concern, but he knew of no obvious remedy.

APPENDIX 11

*(referred to in paragraphs 5.19, 8.3)*

# Views of large retailers

## A. Associations of large retailers

*The Mail Order Traders Association of Great Britain*

1. The Association stated that the discounts offered by suppliers were an indication of the benefit they obtained in production planning from the placing of large orders. These benefits were passed on by the mail order trade to agents and consumers. Any attempt to control and reduce discounts would force prices upwards to the detriment of consumers.

*Multiple Food and Drink Retailers Association*[1]

2. The Association stated that keen competition had been characteristic of food and drink retailing for many decades but that the 'search for volume' when consumer spending was under pressure had intensified it. This deep-rooted competitiveness had resulted in a high degree of efficiency which had brought the consumer the two-fold benefit of low prices and improved shopping conditions. The efficiency of the industry was clearly indicated by the progressive decline of gross margins available to the retail trade.

3. In every High Street and new town centre it was apparent that there had been substantial capital expenditure on food retailing. This had taken place, despite unfavourable fiscal discrimination, in comparison with manufacturing industry, because retailers had been quick to recognise and to respond to the public need. Moreover, the buildings required for modern retailing and the increasingly sophisticated nature of modern systems of transport, goods handling and computerisation, demanded substantial and long term investment, as also did new technological developments such as article numbering and goods scanning at check-outs.

4. The inflation in recent years had complex and far-reaching effects on food shopping. It had heightened the priority given to price in shopping decisions and this emphasis on price had been accentuated by a variety of governmental interventions. The housewife had spent a declining part of her budget on food because every family wished to maintain its improved living standards, especially new social norms of leisure and comfort.

5. Structural changes in retailing would have occurred quite apart from any impact of discriminatory discounting. Concentration was likely to continue as a result of keen competition intensified by the effects of inflation. The use of improved methods would extend to both large and small retailers and some opportunities would also be created, for example for the specialist and by 'shop in shop' facilities as the large multiples extended the range of their operations. Those who, for whatever reason, found it difficult to visit

[1] This body amalgamated with the Multiple Shops Federation in the course of the inquiry to form the British Multiple Retailers Association (see paragraph 22).

shopping centres and supermarkets would continue to need small shops but any problems for them created by structural changes raised wider social issues and could not be considered simply in the context of the reference practice.

### Discretionary pricing

6. Discretionary pricing was a proper part of the price mechanism in a free market and, through competition, economies were passed through to the consumer. It was to allow price differentials at the consumer level that resale price maintenance was abolished.

7. Widespread comment by the media had led to a belief that large retailers had monopolistic power which they used in their buying activities to the detriment of manufacturing industry. This was a facile argument which ignored the relative spread of power in retailing as compared with manufacturing and took no account of the real reasons for the decline of certain industries and manufacturers.

8. Discounts granted to large retailers reflected benefits to suppliers who were able to make forward production plans on the basis of the business offered, secure easy negotiation of prices and other terms and were assured of fewer bad debts and of reduced distribution costs; moreover, they were relieved of the cost of certain marketing activities which were undertaken by retailers. The association stated that in depressed conditions food manufacturers had competed with one another in the discounts which they had offered in order to preserve their own volume, and had offered inducements which retailers had accepted and passed to the shopper in their own battle for custom. The suggestion that it was the buying power of large retailers which had caused manufacturers' problems overlooked the fact that every trader had the option of refusing a price and that the basic problem for retailers and manufacturers was inflation.

9. There were many arbitrary factors in manufacturers' list prices. The latter were merely a starting point and were usually fixed in the expectation that some adjustments would need to be made in favour of large customers, although it would be unusual for prices to be negotiated with small customers to whom list prices would apply.

10. Apart from fresh commodities, large retailers were stronger buyers than small ones. It was possible for large retailers to sell individual items more cheaply than small retailers could buy them but this was not true of the totality of a retailer's trade. The advantage to multiple retailers of 'drop shipment' terms should not be viewed in isolation but against the background of the whole trading relationship and the very real administrative efficiencies which resulted from such arrangements. Differences between the selling prices of small independents and the multiples were only in small part due to the discounts obtained from suppliers; the efficiency of the total retailing operation was much the more significant factor.

11. Despite the fact that multiple retailers had a substantial share of the food and drink market, no single company could be said to be in a dominant position. Individually the largest single share was held by the Co-operative movement and was estimated to be only 15 per cent of the grocery market. A feature of the multiple trade in recent years had been the emergence of highly successful new companies, which now had a significant market share. It was unlikely that a general, local or specialist monopoly situation would develop in retailing. It should still be possible for new multiple retailers to develop as they had done in the past.

12. It was a common feature in the manufacturing sector for brand leaders in pre-packaged commodities to have more than 25 per cent of the markets, which gave rise to a technical monopoly situation and price leadership. With continuing concentration among manufacturing companies, this situation could well intensify. Some companies were suffering from a lack of financial resources but this was due more to the effects of inflation and bad commercial judgment than of discounts. However, it was still possible for new manufacturing companies to emerge with prices freely negotiated between the new manufacturers and larger retailers. Many large retailers gave help to smaller manufacturers in order to promote competition.

SMALLER RETAIL OUTLETS

13. Inflation had reduced the call on capacity in manufacturing with clearly painful results. That same decline had caused the closure of small shops, owned alike by private and multiple traders, resulting in equally numerous and painful redundancies but, because of their disparate character, with less obvious and dramatic impact. This particular effect of inflation was illustrated by the rapid increase which had taken place in such costs as labour, rents, rates, electricity and repairs which had combined to destroy the viability of many small outlets. Rather than discretionary prices, it was inflation, with its twin effects on demand and operating costs, which had been responsible for the closure of these small outlets.

14. It was the smaller outlets in general that were tending to close, whether independently or multiple-owned, despite the latter's access to price advantages. The disappearing outlets were not necessarily all small personal service shops but included small to medium sized supermarkets of early design. Few small units had closed only as a result of inability to compete on price, but because of inflation and because they no longer met the public need which had greatly changed; in some cases population movement and bureaucratic pressures had brought about a trader's withdrawal.

15. The Association strongly resisted any suggestion that the buying power of the multiples was squeezing out the private trader. Independents frequently re-opened closed multiple branches and ran them as family concerns unhampered by restrictive employee legislation. Moreover, it was quite possible for small retailers to operate very effectively by allying themselves to the buying power of a voluntary group or by using a cash-and-carry warehouse. It was also possible for small retailers to develop and grow in size without the benefit of the buying power with which discounts were associated.

THE EFFECTS OF CONTROL AND ENFORCEMENT

16. The Association stated that any attempt to control discounts, either statutorily or voluntarily, would result in price rigidity tantamount to wholesale price maintenance. It would atrophy the buyer who could no longer use his negotiating skill to win concessions. Commercial vigour would give way to complacency and inevitable decline for which the public would have to pay.

17. Reduced commercial flexibility would make it harder for manufacturers to off-load surpluses to selected buyers at special prices, an operation in which speed and convenience were often as important as price. Similarly, rapid distribution and promotion of new lines would be more difficult to negotiate. New products did not always succeed, and retailers would be less willing to displace sound earners for unestablished lines.

18. Branded products would be partially replaced by 'technically' different 'own label' products which would not increase real choice to the consumer but would increase costs because greater stocks of packaging materials and finished goods, with the associated administrative burdens, would be unavoidable. Proliferation of 'own label' products would probably be most detrimental to the secondary national manufacturers, and so reinforce the power of major brand manufacturers.

19. Control would encourage imports from elsewhere in the European Economic Community. Retailers properly explored all sources of supply, especially in the wider European market now available, an advantage intended by the British Government from the United Kingdom's entry. Any action which encouraged a move away from major brands into 'own label' would heighten the possibility of purchasing outside the United Kingdom.

20. It was doubtful whether the theory of 'only quantifiably justified' discounts could be put into equitable practice. Economy within a transaction comprised numerous elements of which only a few were truly measurable such as quantity/value per drop. Commercial negotiation was based on a synthesis of all the factors, some quantifiable and some unquantifiable. The judgment as to how they were best reflected in price should rest with the parties involved. The following were examples of unquantifiable factors:

(i) instant distribution and testing of a new product;
(ii) guaranteed in-stock situation with agreed stock levels;
(iii) constant price reduction;
(iv) simplicity of ordering;
(v) speed and regularity of payments;
(vi) fast turn-round of vehicles;
(vii) standardised documentation;
(viii) standardised claims procedure;
(ix) regular orders;

(x) firm commitment to quantities to allow pre-planning of procurement and production;
(xi) synchronised advertising and co-ordinated promotions;
(xii) permission to merchandise the retailer's display space;
(xiii) production by the retailer of jointly agreed point-of-sale material;
(xiv) pre-planned drop shipments;
(xv) one central decision point; and
(xvi) less need for dealer incentive.

21. Enforcement would undoubtedly lead to additional costs; the burden of investigation would be extremely heavy and would involve subjective judgments on matters which could not be quantified objectively. It was questionable whether such further bureaucratic burdens could be justified. Legislation to control discounts was not required.

*Multiple Shops Federation*[1]

22. The Federation submitted views which were similar in many respects to those advanced by the Multiple Food and Drink Retailers Association. The Federation maintained that the granting of special discounts to retailers brought benefit to suppliers, to the whole retail trade and to consumers, and that it was not an uncompetitive practice, nor was it against the public interest. Interference with the present well-established commercial arrangements would:

(i) be detrimental to suppliers and, if buying on competitive terms were prevented, could result in an increase in buying from foreign suppliers with serious consequences for the balance of payments and home employment;
(ii) disrupt the operation of the retail trade, preventing expansion, development and efficient operation as the result of competition; and
(iii) be against the interests of the consumer since it would inevitably result in higher prices and a reduction in service.

**B. Individual large retailers**

23. The particular policies adopted by the companies differed but the general trend was towards fewer but larger outlets and increasing diversification of product ranges. Reference was made to the development, in conjunction with local planning authorities, of district centres in which the existence of a superstore became a magnet for other forms of mainly specialist retailing. It was also argued that small shops had not been put out of business by the reference practice but mainly because of factors such as the development of city centres and increases in rent and rates.

24. It was common for uniform prices to be charged in all outlets but some companies varied their prices according to the class of store and local

[1] See paragraph 2, footnote 1.

competition. Local management frequently had a measure of discretion in respect of the items to be stocked out of those available in the company's 'list'. 'Own label' goods were a feature of the marketing image which retailers sought to project. Buying was generally a function which was undertaken centrally.

25. Some companies followed a policy of accepting delivery at a central warehouse and themselves arranged for distribution to their retail outlets. Others accepted branch delivery by the supplier where the latter made little or no extra charge for this. Some companies which took delivery at a central warehouse stated that the negotiated prices did not take full account of the cost savings to the supplier of this method of delivery. Emphasis was laid on the advantages to the supplier of the opportunities of forward planning and high turnover derived from the multiples' large orders.

26. All the retailers who gave evidence were opposed to any measures to control or limit discounts. The majority considered that such measures would restrict competition and increase prices to retailers and to consumers. Reference was also made to the possibility of an increased level of imports, structural rigidity and the lack of any real benefit to manufacturers, retailers and consumers.

## Appendix 12

*(referred to in paragraphs 6.16, 7.21, 7.27)*

# Views of public authorities and trades unions

1. The Commission received information, views and evidence from a number of Government departments, local authorities, trade associations, trades unions, private individuals and others. The following is a summary of comments which have not been included in other appropriate appendices.

### Department of the Environment

2. Development control as administered by local authorities was concerned with questions of land use and amenity and its object was to regulate the development and use of land in the public interest. It was important for authorities, when exercising that control over retail development, to be aware of the changes taking place in retailing and shopping. The type of shop and the nature of the service to be provided to the public would be material to an authority's consideration of an application for planning permission.

3. The discounts practice could have contributed to the decline of small shops but it would have been only one of several factors and possibly a relatively unimportant one.

### Department of Health and Social Security

4. The Department stated that in spite of the large number of pharmacy closures over the last 15 years there was not yet any widespread difficulty of access to pharmaceutical services. Some closures in villages and outlying suburbs had resulted in inconvenience and individual difficulty for less mobile people and should pharmacy closures decline further at the rates of recent years these problems were likely to become more widespread; the decline had lessened substantially, however, from a net loss of 229 in 1975 to 33 in 1979. Many factors, such as redevelopment, changing shopping habits and the loss of retail trade to supermarkets, had contributed to the closures and there was no simple or single explanation for them.

### The Post Office

5. In rural areas many sub-post offices had been closed and this was in many cases due to the declining viability of the village shop. It seemed likely that this trend would continue and that some areas would inevitably lose post office facilities; to some degree this would be due to the lack of support received by local shops and it was unfortunate that the more vulnerable sections of the community would be the ones to suffer. The discounts practice was a factor which contributed to these problems.

**The Highland Regional Council and the Rural Committee Development Project of the Hereford and Worcester County Council**

6. Both authorities drew attention to the varying levels of discount granted to retailers of bread in their areas. The Regional Council considered that the application of nationally negotiated rates of discount to small branches of multiples was unfair to small retailers in rural areas. The other felt that the practice put an unfair financial burden on rural communities and particularly on the disadvantaged members of society.

**West Midlands County Council**

7. Larger discounts to retailers for bulk buying had helped to promote the growth of supermarkets and large retail outlets and to accelerate the closure of neighbourhood shops. Although the existence of a wide range of goods at lower prices had benefited many consumers the disadvantaged members of the community had suffered. Moreover, smaller shops were unable to obtain adequate discounts or to effect economies of scale and so their prices were relatively high; voluntary group trading had helped but was not a complete solution. Some small shops attempted to compete by extending their hours of opening and this presented a problem in respect of enforcement of the Shops Act.

**Standing Conference of Rural Community Councils**

8. The decline of rural services was partly attributable to variable discounts; closures of retail outlets (particularly pharmacies, sub-post offices and garages) gave rise to a restriction of other rural services. The use of variable discounts by manufacturers and wholesalers should be prohibited unless the discounts reflected differences in distribution costs.

**Union of Shop, Distributive and Allied Workers**

9. The Union stated that the baking industry was contracting, that it paid low wages and that these factors were in part due to the discounts practice. Pressure exerted by the multiples for high discounts was generally successful because their custom was important to the major plant bakers; moreover, it was accompanied by the threat to make use of alternative facilities such as in-store baking. The bakers could react to this pressure by increasing productivity or by restricting wage increases and they had in fact done both. Low wages resulted in excessive overtime and this contributed to reduced employment opportunities in the industry.

10. The Union considered that discounting on bread was particularly damaging to the small food shop. Such shops had to stock bread because their customers wanted it. They also had to price it reasonably in relation to prices in supermarkets because their customers tended to judge prices in the shop as a whole by reference to the price of bread. With both higher overheads than the multiples and higher buying prices the small food shop

was squeezed. Discounts given to multiple chains bore no relation to economies resulting from bulk purchasing and meant that the small food shop was unfairly subsidising the large retailer. The effect of Discounts made the position of the small shop and its employees even more precarious and kept wages low.

11. The pressure on prices had led to manufacturing processes geared to high volume production and mergers of some baking companies. Low wages had led to dissatisfaction and created high labour turnover. Skilled workers had left the industry to seek higher pay with the results that there were fewer skilled and time-served bakers than before. These factors had contributed to a reduction in the quality of bread and consumer choice. Such choice as was available often fell into two distinct price categories: relatively cheap bread in supermarkets and higher priced bread in the small shops. Consumers unable to use supermarkets were thus forced to pay higher prices with the result that two classes of consumer were created.

12. The abolition of discriminatory discounting would lead to better, more stable and more equitable conditions in the industry and that it would benefit consumers generally.

**United Road Transport Union**

13. The Union, which represented the men who delivered bread from the bakeries to the shops, stated (July 1980) that, while a period of stability had been introduced to the industry following the withdrawal of Spillers, to which discounting had been a major contributory factor, some smaller but nevertheless quite large private companies were increasing their market share by offering very high discounts. If the two big companies joined this battle some bakers would be forced out of business and the price of bread raised to pay for the higher discounts.

14. The Union had been concerned about the threat of redundancies because of the decline in the number of retail outlets but this was no longer a serious problem as there were now relatively few small shops which still sold bread. The Union's main concern was that the baking companies should remain fully competitive in terms of the quality and variety of the product rather than embarking on another discount war.

APPENDIX 13

*(referred to in paragraphs 6.17, 6.20, 6.21)*

# Financial and other statistics related to food manufacturing

**A. Profit rates on capital employed:**

1. The following estimates of profitability are taken from the Department of Industry's 'Business Monitor MA3—Company Finance' which is derived from the aggregated published results of over 1,000 of the largest United Kingdom quoted companies. There are several reasons why the results should be treated with some caution. In particular, the allocation of companies to manufacturing sectors is necessarily imprecise because of the mixed nature of some of the businesses involved. It should also be noted that world-wide operations of the selected companies are included to the extent that United Kingdom activities cannot be segregated. Moreover, some large unquoted foreign companies operating in the United Kingdom are excluded from the figures. These remarks apply to Tables 1, 2, 4 and 5.

TABLE 1

| | *Food manufacturing* % | *All UK*[1] *manufacturing* % | *Retail distribution* % |
|---|---|---|---|
| *Historic cost basis* | | | |
| 1965 | 16·5 | 13·9 | 20·4 |
| 1966 | 14·0 | 12·0 | 19·5 |
| 1967 | 14·4 | 12·0 | 19·8 |
| 1968 | 14·8 | 13·4 | 20·1 |
| 1969 | 21·8 | 12·5 | 19·8 |
| 1970 | 11·6 | 11·5 | 20·1 |
| 1971 | 12·4 | 12·5 | 22·2 |
| 1972 | 16·3 | 15·0 | 26·2 |
| 1973 | 16·8 | 17·4 | 24·7 |
| 1974 | 17·1 | 17·0 | 21·4 |
| 1975 | 18·5 | 15·5 | 21·4 |
| 1976 | 21·7 | 18·8 | 21·5 |
| 1977 | 17·5 | 17·2 | 21·8 |

[1]Includes food manufacturing.

2. While figures have not been published by the Department for years later than 1977, such later figures as we have seen from other sources, although not comparable, indicate that the real return for all these categories has tended to decline further and that there has been no substantial change in relative position of the three categories.

**B. Net profit margins for food manufacturers:**

3. The following table reproduces statistics of net profit margins, obtained by The Food and Drink Industries Council from some 30 of its member companies since 1974, together with an earlier survey carried out by the Food Manufacturers Federation.

TABLE 2

| | Food manufacturing manufacturing % | All UK[1] manufacturing % | Retail distribution % |
|---|---|---|---|
| *Current cost basis* | | | |
| 1965 | 14·7 | 11·0 | 17·8 |
| 1966 | 11·4 | 9·2 | 17·0 |
| 1967 | 11·6 | 9·6 | 17·4 |
| 1968 | 10·5 | 9·9 | 16·3 |
| 1969 | 9·2 | 8·7 | 15·5 |
| 1970 | 6·5 | 5·8 | 14·8 |
| 1971 | 6·6 | 7·2 | 16·9 |
| 1972 | 9·8 | 8·9 | 21·1 |
| 1973 | 1·3 | 7·1 | 18·4 |
| 1974 | 3·5 | 3·5 | 11·4 |
| 1975 | 5·5 | 2·1 | 11·3 |
| 1976 | 5·3 | 4·4 | 10·0 |
| 1977 | 4·9 | 5·1 | 10·3 |

[1] Includes food manufacturing.

*Notes to Tables 1 and 2*

[1] The profits taken into account in arriving at the foregoing rates of return are based on reported net trading income before interest, and less depreciation. Table 2 also excludes stock appreciation. Capital employed is averaged and includes net current assets other than investments, bank overdrafts and loans, together with tangible fixed assets at written down value.

[2] Table 2 illustrates the steady decline in profitability of all United Kingdom manufacturing during the latter half of the 1960s in real terms, after a period of relative stability. During the 1970s, as shown by Table 1, the historic rate of return increased appreciably but this takes no account of stock appreciation and other inflationary factors. The real rate of return fell almost continuously throughout the period and most sharply during the 1970s with a slight recovery towards the end. The profitability of food manufacturing followed a similar pattern to United Kingdom manufacturing, although the fluctuations were a little more pronounced. Retail distribution also suffered a sharp fall in real rates of return during these years, particularly since 1973, but not to the same extent as food manufacturing. Between 1965 and 1977 real rates of return fell in absolute terms, by the following number of percentage points:

| | |
|---|---|
| Food manufacturing | 67 |
| All UK manufacturing | 54 |
| Retail distribution | 42 |

TABLE 3 **Food manufacturers' profit/loss as a percentage of sales**

| | | Historic | Adjusted to take account of the inflationary effects of depreciation and cost of sales | Further adjusted to take account of gearing |
|---|---|---|---|---|
| 1968 | | 5·39 | | |
| 1969 | | 4·65 | | |
| 1970 | | 4·21 | | |
| 1971 | | 5·34 | N/A | N/A |
| 1972 | | 5·31 | | |
| 1973 | | 4·00 | | |
| 1974 | | 2.97 | | |
| 1974 | | 3·18 | (−1·59) | (−0·07) |
| 1975 | | 3·86 | 0·05 | 1·27 |
| 1976 | | 4·23 | 0·34 | 1·39 |
| 1977 | | 3·64 | (−0·16) | 1·03 |
| 1978 | | 3·95 | (−0·02) | 1·10 |
| 1979 | | 4·39 | 1·86 | 2·48 |
| Quarter | | | | |
| 1977 | I | 4·10 | | |
| | II | 4·00 | N/A | N/A |
| | III | 3·45 | | |
| | IV | 3·16 | | |
| 1978 | I | 2·79 | (−1·13) | 0·04 |
| | II | 3·80 | (−1.18) | 0·73 |
| | III | 4·39 | 0·79 | 1.52 |
| | IV | 4·37 | 1·48 | 2·12 |
| 1979 | I | 3·67 | 1·72 | 2·34 |
| | II | 4·20 | 1·83 | 2·45 |
| | III | 4·51 | 1·83 | 2·46 |
| | IV | 4·85 | 2·07 | 2·67 |
| 1980 | I | 2·65 | 1·65 | 2·31 |
| | II | 3·63 | 1·36 | 2·06 |

C. **Flow of funds:**

4. Table 4 compares the make up of the source and appropriation of funds, for large quoted companies in food manufacturing, all United Kingdom manufacturing and retail distribution. The table shows the aggregate of results from 1975 to 1977 in percentage terms.

TABLE 4

| | *3 year total 1975 to 1977* | | |
|---|---|---|---|
| | *Food manufacturing* % | *All manufacturing* % | *Retail distribution* % |
| *Sources of funds:* | | | |
| Profits* | 77 | 75 | 80 |
| Proceeds from long-term loans or share issues | 10 | 10 | 4 |
| Increase in creditors | 13 | 15 | 16 |
| Gross funds raised | 100 | 100 | 100 |
| *Appropriation of funds:* | | | |
| Interest | 12 | 12 | 7 |
| Taxation | 12 | 11 | 17 |
| Dividends | 7 | 7 | 10 |
| Together | 31 | 30 | 34 |
| Additional stocks and debtors | 29 | 32 | 32 |
| Net purchases of fixed assets and investments | 35 | 36 | 32 |
| Total uses | 95 | 98 | 98 |
| Net improvement to liquid funds† | 5 | 2 | 2 |

*Notes:*
* Profits including sundry revenues and before charging depreciation, interest and tax.
† Liquid funds includes bank overdrafts for this purpose.

5. Table 4 indicates that, during the three year period reviewed, the composition of sources and appropriation of funds did not differ greatly between the three types of company. On a relative basis, retailers borrowed less and invested a smaller proportion of available funds in fixed assets than manufacturers (including food manufacturers). On the other hand the liquidity of food manufacturers showed a slightly greater improvement.

D. **Capital formation:**

6. Table 5 shows the amounts spent on fixed assets during the years 1973, 1976 and 1977, by large quoted companies in manufacturing industry, food manufacturing and retailers. A comparison is made of the amount of this investment relative to the stock of fixed assets at the year end.

TABLE 5 **Capital expenditure**

| | *1973* | *1976* | *1977* |
|---|---|---|---|
| (*a*) *Food manufacturing:* | | | |
| Total fixed assets* (£m) | 2,691 | 3,659 | 3,881 |
| New additions (£m) | 224 | 323 | 427 |
| Expressed as a percentage of total fixed assets | 8·3 | 8·8 | 11·0 |
| Index of growth† | 100 | 106 | 133 |
| (*b*) *Manufacturing industry:* | | | |
| Total fixed assets* (£m) | 22,425 | 32,201 | 35,175 |
| New additions (£m) | 2,082 | 3,151 | 4,108 |
| Expressed as a percentage of total fixed assets | 9·3 | 9·8 | 11·7 |
| Index of growth† | 100 | 105 | 126 |
| (*c*) *Retail distribution:* | | | |
| Total fixed assets* (£m) | 2,720 | 3,913 | 4,338 |
| New additions (£m) | 272 | 344 | 382 |
| Expressed as a percentage of total fixed assets | 10·0 | 8·8 | 8·8 |
| Index of growth† | 100 | 126 | 140 |

*Note:*

* Gross historic value at year end.

† In respect of new additions 1973 = 100.

## E. Trade performance

TABLE 6 **Import and export ratios**

| MLH | | Output weight* | Imports/Home demand per cent 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 211 | Grain milling | 3 | 3 | 3 | 3 | 2 | 2 | 3 | 3 | 2 | 2 | 3 |
| 212 | Bread and flour confectionery | 11 | — | — | — | — | — | 1 | — | — | — | — |
| 213 | Biscuits | 4 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 214 | Bacon curing, meat and fish products | 9 | 34 | 32 | 32 | 36 | 35 | 30 | 30 | 30 | 31 | 28 |
| 215 | Milk and milk products | 6 | 20 | 20 | 21 | 17 | 24 | 27 | 22 | 18 | 17 | 16 |
| 216 | Sugar | 3 | 34 | 34 | 34 | 36 | 48 | 52 | 40 | 41 | 39 | 35 |
| 217 | Cocoa, chocolate and sugar confectionery | 5 | 9 | 8 | 8 | 10 | 13 | 11 | 12 | 15 | 16 | 15 |
| 218 | Fruit and vegetable products | 4 | 29 | 26 | 26 | 32 | 32 | 25 | 28 | 31 | 26 | 26 |
| 219 | Animal and poultry foods | 4 | 7 | 6 | 7 | 8 | 6 | 5 | 5 | 6 | 6 | 6 |
| 221 | Vegetable and animal oils and fats | 1 | 43 | 43 | 37 | 40 | 36 | 32 | 31 | 32 | 32 | 36 |
| 229 | Food industries not elsewhere specified | 4 | 31 | 28 | 24 | 30 | 29 | 26 | 30 | 35 | 27 | 28 |
| 231 | Brewing and malting | 12 | 2 | 2 | 2 | 4 | 3 | 2 | 2 | 2 | 2 | 2 |
| 232 | Soft drinks | 3 | 7 | 9 | 9 | 10 | 10 | 7 | 8 | 10 | 10 | 10 |
| | Total | 68 | 18 | 18 | 17 | 20 | 21 | 20 | 19 | 19 | 17 | 17 |

*Source: Economic Trends*

*Definitions:* Home demand = Manufacturers' sales of principal products plus imports minus exports.

* A more detailed description of the products covered by each MLH is given in the Standard Industrial Classification (Revised 1968). Weight per 1,000 used in the index of industrial production—base year 1975.

| MLH | | Output weight* | Exports/Manufacturers' sales per cent | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | *1970* | *1971* | *1972* | *1973* | *1974* | *1975* | *1976* | *1977* | *1978* | *1979* |
| 211 | Grain milling | 3 | 1 | 2 | 1 | 2 | 2 | 1 | 1 | 1 | 2 | 1 |
| 212 | Bread and flour confectionery | 11 | — | — | — | — | — | — | — | 1 | 1 | 1 |
| 213 | Biscuits | 4 | 7 | 8 | 7 | 8 | 10 | 10 | 13 | 14 | 13 | 13 |
| 214 | Bacon curing, meat and fish products | 9 | 4 | 4 | 4 | 5 | 5 | 4 | 5 | 7 | 8 | 6 |
| 215 | Milk and milk products | 6 | 2 | 2 | 3 | 4 | 4 | 4 | 6 | 5 | 8 | 7 |
| 216 | Sugar | 3 | 5 | 6 | 8 | 11 | 13 | 16 | 10 | 7 | 5 | 4 |
| 217 | Cocoa, chocolate and sugar confectionery | 5 | 12 | 12 | 11 | 12 | 14 | 14 | 16 | 19 | 17 | 15 |
| 218 | Fruit and vegetable products | 4 | 5 | 5 | 5 | 6 | 6 | 6 | 7 | 8 | 10 | 9 |
| 219 | Animal and poultry foods | 4 | 1 | 2 | 2 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| 221 | Vegetable and animal oils and fats | 1 | 4 | 4 | 5 | 5 | 5 | 5 | 6 | 6 | 6 | 7 |
| 229 | Food industries not elsewhere specified | 4 | 8 | 9 | 7 | 10 | 11 | 10 | 9 | 12 | 12 | 10 |
| 231 | Brewing and malting | 12 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 232 | Soft drinks | 3 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 6 | 5 |
| | Total | 68 | 3 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 6 |

*Source: Economic Trends*

*Definitions:* Manufacturers' sales = Estimated sales of principal products for all establishments, excluding where possible work done and sales of waste products.

* A more detailed description of the products covered by each MLH is given in the Standard Industrial Classification (Revised 1968). Weight per 1,000 used in the index of industrial production—base year 1975.

TABLE 7 **UK trade in total and with EEC**

| Products | Year | Exports: Total UK | Exports: Of which UK exports to EEC % | Imports: Total UK | Imports: Of which UK imports from EEC % |
|---|---|---|---|---|---|
| Biscuits[1]* | 1970 | 42,994 tons | 26·84% | 13,170 tons | 55·64% |
| | 1975 | 64,690 tons | 51·52% | 11,707 tons | 84·86% |
| | 1979 | 80,726 tons | 50·99% | 17,548 tons | 88·65% |
| Bread and Flour Confectionery[2]* | 1970 | 5,052 tons | 28·02%[5]* | 9,034 tons | 17·41%* |
| | 1975 | 14,851 tons | 69·29% | 5,085 tons | 18·43% |
| | 1979 | 20,504 tons | 75·06% | 5,462 tons | 76·47% |
| Cocoa, Chocolate and Sugar Confectionery[3]* | 1970 | 42,555 tons | 28·62% | 50,985 tons | 74·83%[7]* |
| | 1975 | 46,287 tons | 26·39% | 45,043 tons | 93·61% |
| | 1979 | 89,277 tons | 50·59% | 57,888 tons | 94·11% |
| Fruit and Vegetable Products[4]* | 1970 | 161,528 tons | 66·97%[8]* | 888,241 tons | 16·63%[9]* |
| | 1975 | 77,947 tons | 42·67% | 615,865 tons | 25·84% |
| | 1979 | 223,584 tons | 77·48% | 842,230 tons | 29·38% |

*Source: Overseas Trade Statistics.*

*Notes:*

[1]* Pastry, Biscuits, Cakes and other fine bakers' wares, (Classification: 0.48.42)

[2]* Bread, Ships' Biscuits and other ordinary bakers' wares, (Classification: 0.48.41), also Sealine Wafers, Communion Wafers and similar products, (Classification 0.48.83) for the years 1970 and 1975.

[3]* Chocolate and other food preparations containing cocoa. (Classification: 0.73)

[4]* Relating to the following Overseas Trade Statistics' Classifications:

For 1970: 0.53:3, 0.53:61, 62, 63 and 64, 0.53:9, 0.54:20, 0.54:51, 0.54:61, 62, 0.54:81, 0.55:41, 42, 43 and 44.
0.55:51 and 0.55:52.

For 1975: As above but excluding 0.53:64, 0.54:20, and 0.54:51, and adding 0.55:45.

For 1979: Again as 1970 but excluding 0.53:3, 61, 62,63,64 and 0.53:9: 0.54:51, 61 and 62, 0.55, 41, 42, 43, 44, 51 and 52 and adding 0.56:10, 43, 49 and 52 and 0.58:30, 61, 62, 63, 64 and also 0.58:99

[5]* In 1970 excluding exports (0.48.41) to Eire or Denmark, and also excluding exports (0.48.83) to Eire.

[6]* In 1970 excluding imports (0.48.41) from Denmark, and also excluding imports (0.48.83) from Eire.

[7]* In 1970 excluding imports from Denmark.

[8]* In 1970 excluding exports to Denmark and Eire with the exception of the classification 0.54.61 for Eire.

[9]* In 1970 excluding imports from Denmark and Eire within the following categories.

For Denmark; 0.53:30, 61, 62, 63 and 64.

0.53:90, 0.54:20, 62, 81 and 0.55:41, 42, 43 44 and 0.55:51

and for Eire:

0.53:30, 61, 62, 64, 90

0.54:62, 81, and 0.55: 41, 44 and 51.

APPENDIX 14

*(referred to in paragraphs 6.20, 8.5)*

# Views of manufacturers (other than food manufacturers)

## A. Association of manufacturers

*British Carpet Manufacturers' Association*

1. The Association estimated that on the latest figures the multiple and Co-operative retailers, including department and furniture stores, accounted for some 48–50 per cent of carpet sales by retailers and some 33 per cent of total carpet sales including the mail order, contract and wholesale sectors. At the present time about 63 per cent of all carpets sold in the United Kingdom are purchased by a handful of retailers.

2. The carpet manufacturers were ready to supply 'own label' carpets without restriction. In 1978 one-fifth of retailers' volume was in 'own label' lines (one-third of multiples, one-fifth of independents, one-tenth of Co-operatives).

3. The bargaining power of the multiples and Co-operatives enabled them to offer significantly lower retail prices, while manufacturers' margins were often so slim as to eliminate a viable profit, thus hazarding investment, jobs and the survival of many manufacturing concerns. A sample of manufacturers' results showed pre-tax profits of less than 4 per cent of turnover in six cases out of seven. Manufacturers were also exposed to competition from imports which had reduced their share of the United Kingdom market.

4. It was usual for manufacturers to negotiate discounts to their factory list prices. The reasons for offering special terms or discounts to some customers and not others were:

(*a*) volume sales;

(*b*) the size of a consignment or 'drop', for example, accepting the delivery of six rolls instead of two deliveries of three rolls each;

(*c*) promotion of a new line; and

(*d*) carrying stock.

Any advantage gained by a larger order for one particular quality (that is, in a long run) tended to be offset by the discount required. The typical range of discounts offered and the reasons for giving them are illustrated by the following:

| | *per cent* | |
|---|---|---|
| | *Lowest* | *Highest* |
| Trading terms | nil | 25 |
| Special offers | 20 | 40 |
| Rolls/cut lengths differential | 10 | 20 |
| New range introductions | nil | 20 |
| Accepting supplier's full range | 15 | 22½ |

The rise of powerful retail multiples in recent years had introduced an element of negotiation under duress. In order to maintain employment, more and more orders were being negotiated that resulted in little or no profit. There had also been a considerable increase in the inducements offered to buyers, and to retail sales staff, eg competitions, holidays abroad, etc.

5. Prior to 1960, when the practice was prohibited by the Restrictive Practices Court, carpet manufacturers agreed a common scale of prices related to quality and competed largely on quality within an agreed price range. In the past 20 years manufacturers had perforce allowed the establishment of discounting precedents and the practice of discounting had grown as manufacturers competed for business. Competition had become progressively harder in the past decade with the advent of the very large retail groups. Their aggressive selling and advertising methods had contributed to the decline of the smaller independent stores. In turn, the independent stores had banded together to obtain similarly advantageous terms for their members. Pressure on the manufacturers had increased with the abolition of resale price maintenance as retailers competed to give 'bargains'.

6. The industry also had a problem of excess capacity. In 1978 there was a 71 per cent utilisation of total woven capacity and 67 per cent utilisation of total tufted capacity. This situation, which had continued to deteriorate in 1979, was affected by the rate of change in technology which required new investment, and the excess capacity included some obsolescent machinery. However, manufacturers were bound to be vulnerable to determined discount negotiating when so significant a proportion of their capital investment was standing idle. It was expected that demand would continue to shift towards tufted carpets, and it was in this market sector that the multiples and Co-operatives were most competitive.

7. With the present emphasis on fair trading, the Association believed that legislation was required to give not only the consumer but also the manufacturer a fair basis of trade. They advocated something on the lines of the Robinson-Patman legislation in the United States, requiring a seller to offer all buyers the same terms for the same product. Carpet manufacturers had been forced by the Restrictive Trade Practices legislation and the abolition of resale price maintenance to deviate from this principle. If, through the power of the large retail groups, manufacturers were forced to continue to sell at lower prices, or to give higher discounts or greater advertising allowances, they would soon be put out of business.

B. **Individual manufacturers**

8. Following the product surveys described in Appendix 5, additional information and views were obtained from a number of manufacturers of the products covered. The evidence so obtained is summarised below under the following headings:

(*a*) paper handkerchiefs;

(*b*) ladies fine-gauge hosiery;

(*c*) cigarettes;

(*d*) paint; and

(*e*) refrigerators.

The views expressed referred to the whole of the manufacturer's business which often includes other products.

*Paper handkerchiefs*

9. Manufacturers agreed that the extent of discounting had increased but did not agree about the reasons for the increase. Some thought that the level of discounting was connected with over-capacity in the industry and lack of demand for its products, while others maintained that demand had been steadily increasing.

10. The manufacturers did not deliver directly to small independent retailers because the warehousing and distribution costs involved were too high. Most customers, including wholesalers, bought at the most favourable case rate on the manufacturers' price lists. There were advantages to the manufacturer in dealing with large customers:

(*a*) It helped them to plan forward and take advantage of economies of scale. This was particularly true of 'own label' products and sales to the larger retail multiples.

(*b*) There was a lower risk of bad debts and lower debt collection costs.

(*c*) Warehouse, handling and transport costs, and selling costs, were generally lower.

(*d*) Large retailers provided a more effective medium for point-of-sale promotions and for the marketing of new products, other than products aimed at small independent chemists.

11. The reference practice had not imposed a barrier to entry into the soft tissue industry. The main barrier was the heavy capital investment required for the primary process of manufacturing paper from pulp. It was easier to enter the industry as a converter, buying paper from United Kingdom manufacturers or (more often) importing it from Europe for conversion into soft tissue products.

12. 'Own label' formed a substantial proportion (in some cases 40–50 per cent) of manufacturers' total sales. While manufacturers differed on whether a higher profit was made on 'own label' or on branded products, they agreed that they would prefer to increase their sales of the latter. They believed that the best prospects for future growth lay in branded products which enabled a consumer franchise to be built up.

13. One manufacturer suggested that the increase in discounting had been associated with the period of price controls. The Price Commission had been critical of advertising expenditure by manufacturers, overlooking the importance of advertising in creating brand loyalty. The stronger the brand loyalty the less manufacturers were open to pressure from large retailers.

14. The manufacturers did not believe that anything would be gained by enacting legislation to control discounts. Such legislation might well result in 'own label' business taking a larger share of the market. The industry would benefit more from a revival in the economy, with manufacturers deploying their marketing funds, particularly on advertising, so that they would become less dependent on trade discounts for 'buying' business with key

retailers. The only area in which Government support was needed was in checking imports of toilet tissue from Spain which, the manufacturers alleged, were being dumped on the United Kingdom market.

*Ladies fine-gauge hosiery*

15. The manufacturers said that discounts in hosiery were on a much smaller scale than those in the grocery trade and rarely exceeded 10 per cent of sales value. Opinions differed as to whether the practice of discounting had become more prevalent, though pressure was greater from the large grocery multiples than it had ever been from the traditional drapery buyers. It was agreed, however, that discounting in the hosiery trade resulted more from the policy of the manufacturers themselves, who used it as a tool of marketing, than from pressure from buyers.

16. Manufacturers agreed that there were advantages in dealing with large customers:

(*a*) It helped them to plan forward and take advantage of economies of scale, despite the absence of firm commitments to purchase. In the case of 'own label', the regularity of re-ordering and the existence of a contract facilitated a smooth production flow. The stockholding required could be gauged more accurately, thus reducing the investment in stock to a minimum in relation to the sales achieved.

(*b*) There was a lower risk of bad debts and lower debt collection costs.

(*c*) Warehouse, handling and transport costs and selling costs were lower, at least where delivery was made to a central depot. However, there was advantage to the manufacturer of making contact with the buyers in individual stores.

(*d*) There was some support for the view that large retailers provided a more effective medium for point-of-sale promotions and the marketing of new products, though manufacturers did not limit promotion to large retailers only. It was particularly important to get the better quality products into prestige outlets, such as department stores.

17. The manufacturers did not consider that the reference practice constituted a barrier to entry into the hosiery industry. The industry was not capital intensive, and because of the large number of retail outlets and the proliferation of prices, styles and quality levels, it was not difficult for very small manufacturers to enter, or remain in, the industry. The main disincentive in recent years had been the lack of profit which was a symptom of over-capacity in the industry, amounting to some 25–30 per cent.

18. Wholesalers no longer played a major part in distribution. For the industry as a whole it was estimated that about 20 per cent of output went through wholesalers compared with about 60 per cent 30 years ago. This was attributed to the rise of large retail organisations and the preference of the manufacturers themselves for dealing direct with retailers which enabled them to retain some control over how their products were sold.

19. The reference practice had helped to discourage imports by sharpening competition. However, imports were seen as a potential threat, especially from Italy, and it was feared that import penetration would increase if steps were taken to limit discounts. Views on legislation were divided between those opposed and those in favour on condition that it was coupled with import controls.

*Cigarettes*

20. The tobacco industry had been placed in a difficult situation by the change in the tax system following United Kingdom accession to the EEC. This induced a degree of price competition which had not been seen before and a shift to king-size cigarettes which went from 10 per cent of the market to 60 per cent in slightly over two years.

21. Price competition mainly took the form of 'matched' trade dealing under which both the manufacturer and the distributor made contributions to a reduction in the price to the consumer. This was attractive to large retailers who were cutting their prices in any case and were happy to have part of the cut paid for by the manufacturer or to increase the depth of the cut. Such retailers used cigarettes to some extent to attract customers into their shops, but smaller retailers were less able to sacrifice part of their profits or to benefit through increased turnover from doing so. Nor could such deals be used by wholesalers except in a few cases where satisfactory guarantees could be obtained that the price reduction would be passed on by their customers. Matched trade dealing did not involve any substantial amount of price discrimination, except in so far as it was difficult to apply the arrangement to wholesalers and it tended to be more attractive to certain large retailers than to small retailers.

22. The cigarette market had some special features:

(*a*) brand loyalty was stronger than in many other markets;

(*b*) the high concentration ratio on the supply side and the great dispersion of retail outlets, none of which was large as a proportion of total sales; and

(*c*) the atmosphere of controversy surrounding the industry which made it unattractive to new entrants.

23. The reference practice did not play a very significant part in the tobacco industry. However, some reasonable flexibility needed to be retained in the interests of good relations with customers, and it would be unwise to introduce a legal requirement which would impose a slavishly precise relationship between discounts and differences in supply costs.

*Paint*

24. Concern was expressed about the doubtful future for small retailers and the pressures exerted on the paint industry by large retail organisations. There had once been large numbers of small shops serviced by wholesalers but, with the ending of RPM, grocery multiples were attracted into the business by the large margins obtainable, and the growth of DIY enabled the DIY chains to secure a substantial share of the retail market for paint and

acquire considerable bargaining power. Manufacturers were under constant pressure to give more favourable terms to their largest retail customers, and this had a particularly serious effect on small manufacturers. In the longer run, the adverse effect on manufacturers' profitability would inhibit innovation by denying resources needed for research and development. Even if the leading brands survived, the position of secondary brands might be impaired by increasing recourse to 'own label' sales. Paint would become more akin to a 'commodity' item and, with the inability of manufacturers to replace their capital, the opportunity for import penetration would be enhanced. This would be the more likely if the continuous appearance of new and more sophisticated products on the market was jeopardised by the lack of funds for their development or promotion.

25. Not all manufacturers saw the position in these terms. An alternative view was that the industry had been more affected by inflation, price controls and normal commercial pressures than by the reference practice, and that it was in a far healthier position than the food industry in this respect. Though there were pockets of over-capacity in some sectors of the paint industry, this was more likely to result in keener prices for public sector contracts and in willingness to supply 'own label' paints than in increased pressure for lower prices on branded products. On this view, discounts were as much a part of the marketing strategy of manufacturers as a response to buying pressure from retailers. Small manufacturers were mainly specialist or regional suppliers catering for trade users; they were generally not interested in competing to sell to retailers, and were therefore not much affected by the reference practice.

26. Manufacturers doubted whether legislation would serve any useful purpose. Enforced publication of all prices and terms would expose the suppliers to even greater pressure from powerful buyers, while a ban on price discrimination would encourage the search for other means of influencing customers. A cumbersome administrative or legal regime would be required which would considerably inconvenience suppliers as well as retailers. Retailers might be stimulated to seek supplies abroad if domestic manufacturers were precluded from responding to their bargaining power. Robinson-Patman, often cited as a possible model, formed part of the much wider context of American anti-trust legislation, and could not be simply transplanted to a different environment and different circumstances.

27. It was suggested, however, that the restrictive trade practices legislation should be amended to make it less one-sided by enabling suppliers to get together and defend themselves against the buying strength of powerful customers. The attention of the Government agencies who would be carrying out the new competition policy should be directed as much to the practices of buyers as to those of sellers.

*Refrigerators*

28. The market for refrigerators and other appliances had been greatly affected by the ending of RPM. Manufacturers had been unable to adapt quickly to the rapidly changing circumstances. Large retailers had grown in

size and importance and in their ability to impose pressure on the manufacturers. Consumers had gained in the short-term from the intense price competition, but the long-term effect of prices and therefore profit margins being driven down by the major retailing groups would be to reduce quality and reliability and make less money available for research and development and for investment in buildings and plant. This would ultimately affect employment prospects in the United Kingdom. The industry was subject to strong import competition.

29. Business was seasonal and manufacturers' off-season stocks often had to be cleared at lower prices mainly to large retailers with the necessary space and money. The manufacturers recognised the advantages of dealing with large retailers in terms of continuity of demand, central warehousing, central accounting and the advertisement which they gave to a manufacturer's products. However, the business of small retailers was sought just as keenly as that of large retailers. Many small retailers were not members of buying groups which were able to obtain better terms from manufacturers than their members could obtain by negotiating individually. The manufacturers saw no need for legislation to regulate the giving of discounts.

APPENDIX 15

*(referred to in paragraphs 7.4, 7.21, 8.3)*

# Views of independent retailers

**The Booksellers Association of Great Britain and Ireland**

1. The Association suggested that the maintenance of wide ranging stocks and bibliographical information and commitment to staff training needed to be encouraged by trade discounts superior to those available to outlets which merely creamed the trade.

**Delicatessen and Fine Foods Association**

2. The minority view of the Association (generally representative of the retail membership) was that major stores offered consumers the advantage of one-stop shopping for a wide choice of quality products. The buying advantages secured by these stores were passed on to consumers in the form of lower prices. It was clear that consumers favoured these developments. At the same time smaller shops were in existence, either as branches of multiple groups or as independents, and opportunities continued to exist for them and new entrants. Competition benefited consumers and their interests would be harmed if it were inhibited by legislation.

3. The majority view (generally representative of suppliers to the trade) was that discriminatory discounts were not a reflection of cost savings but of the buying power of large retailers and were anti-competitive in their effect: they resulted in higher prices being charged to smaller retailers in order to offset the cost of discounts given to multiples and tended to encourage the growth of monopoly in retailing. Improvement of efficiency in retailing rather than the use of economic strength would encourage trading in suburban and rural areas and assist the disadvantaged members of society; it would also encourage new entrants to retailing. Discriminatory pricing practices should be controlled by legislation.

**The Motor Agents Association and the Scottish Motor Trade Association[1]**

4. The Association stated that at the end of 1978 there were over 28,000 retail outlets of which 74 per cent were supplied by seven leading petrol companies.

*Pricing*

5. The Associations referred to twelve major variations from the base prices operated by the petrol companies in the form of discounts or allowances to selected retailers, notably direct rebates and discriminatory price support. Others included advantageous credit terms, preferential terms for mortgages,

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[1] For a summary of the Monopolies and Mergers Commission's report on Petrol or of evidence received by us from petrol wholesalers, see Appendix 3.

loans, equipment, and rent as well as promotional incentives; some of them were limited to sites with high volume potential and some to certain types of outlets.

6. The Associations considered that certain of these allowances were extremely difficult to justify either on the grounds of cost savings or of impartial recipient selection. The complex discounting system had resulted in a totally and artificially distorted retail price system to which the hypermarkets and supermarkets had made a major contribution by reason of their willingness to sell petrol as a 'loss leader' and their preferential prices from suppliers, based on the volume purchased over a period and not justified by any savings in actual costs. As a result many retailers had been deprived of sales and had been forced either to increase prices of petrol or other services or to close. If the discriminatory practices of the petrol companies continued to accentuate the financial difficulties of small garages there would probably be an accelerated decline in the number of petrol stations available to the public and the availability of necessary services would be jeopardised, particularly in rural areas. Retail prices not showing a viable commercial return at sites managed and subsidised by the petrol companies might bring short term price benefits to the motorist but in the long term reduced competition would lead to higher prices and a reduction in choice and service.

*Remedies for discrimination*

7. The Associations stated that differentials in price should not be distorted for the purpose of petrol company marketing policies. Companies should be required as far as possible to base their rebates on economic savings; in the view of the Associations this would lead to a narrowing of differentials. Price differentials between geographic zones should be required to conform more exactly to differences in delivery costs from distribution points and small load surcharges should be replaced by large load rebates. Credit terms to retailers should be published and should not be discriminatory in character as between different retail outlets, subject to credit-worthiness.

**The Music Trades Association**

8. The Gramophone Record Retailers Committee of the Association maintained that the buying power, centralised delivery and accounting systems of the multiples enabled them to obtain overriding discounts from suppliers with which to finance reduced prices to consumers. Moreover, the multiples were frequently able to obtain advertising revenue from record manufacturers in connection with promotional campaigns. Records were also supplied to multiples but not to independents on a sale or return basis and this was regarded as inequitable. Independents were unable to compete on a profitable basis.

**National Association of Cycle and Motor Cycle Traders**

9. Selected retailers had been granted preferential discounts and the benefit had been passed on to consumers in the form of reduced retail prices. However, the discount practice had contributed to the closure of many small shops and to the loss of skilled servicing facilities.

**The National Chamber of Trade**

10. The Chamber considered that discounts granted to large retailers were partly a reflection of economies of scale in production and delivery. They were also the result of buying power and were not necessarily related to immediate savings in identifiable costs. The Chamber suggested that a measure of commercial discipline would be introduced if trade associations were allowed some discretion under the Restrictive Trade Practices legislation to act on behalf of members in their relationships with suppliers.

11. A local Chamber of Trade stated that although large retailers enjoyed discounts which were not available to smaller retailers many of them also incurred higher expenses: small retailers could obtain some of the benefits of size through group buying. Moreover, any attempt to introduce controlled marketing would be likely to lead to inefficiency, reduced competition and to evasion.

**National Federation of Retail Newsagents**

12. The Federation stated that some retailers obtained a discount for purchases in bulk and accepted that delivery of large rather than small drops should result in administrative as well as distribution savings. Concern was expressed about the practice (which had in fact been discontinued by the end of 1979) of tobacco companies providing bonuses to certain direct account customers only, about the more favourable terms (unrelated to cost savings) which were believed to be granted to multiples for the supply of newspapers and magazines and about favourable credit terms granted to a minority of retailers and also to wholesalers.

**National Federation of Sub-Postmasters**

13. The Federation represented the interests of its members in their capacity as sub-postmasters. It recognised, however, that the viability of all sub-post offices depended on the ability to trade competitively in the general section of the business operated by the majority of sub-post offices.

**National Food and Drink Federation**

14. The Federation drew attention to the decline in the number of independent retailers during the past twenty years. The number of multiples had also declined but this had been accompanied by an increase in the size of their operations and a reduction in the number of buying points. Several factors, such as the growth of hypermarkets in out-of-town shopping areas and changed consumer shopping habits, had contributed to these changes but the most important single factor was the use of discriminatory discounts which operated to the disadvantage of independent retailers. Further concentration of retailing would be detrimental to the interests of consumers since this would lead to monopoly conditions with higher prices and reduced con-

sumer choice in terms of variety, amenity and the convenience of neighbourhood stores; it would also affect the viability of rural life. The maintenance of a healthy independent retailing sector was therefore important: the establishment of fair terms of trade would assist this objective.

*Pricing*

15. Manufacturers had different price lists for large retailers, wholesalers and small retailers. The price list simply represented a starting point for negotiation with the major multiples who were able to exert pressure on manufacturers by threatened or actual withdrawal of custom. Among the benefits obtained by multiple retailers were additional quantities at no extra charge, 'money-off' packs, promotional and advertising allowances, overriding discounts, extended credit and merchandising services. These advantages for the multiples were paid for by relatively higher prices charged to independent retailers and had resulted in the multiples being able to sell at prices lower than the prices at which independents could buy.

16. The Federation accepted that competition between the multiples brought short-term price benefits to consumers. It was maintained, however, that independents had lower operating costs than multiples and that if fair competition existed this would enable them to charge lower prices to consumers. Those who suffered most (because prices in independent shops were higher than they could be) were the disadvantaged members of the public. Moreover, the fact that manufacturers sometimes sold to multiples at virtually no profit for the sake of maintaining production would be likely to lead to unemployment and this would also be to the general disadvantage of consumers.

*Remedies for discrimination*

17. The Federation stated that there was a need for legislation. Publication of terms of trade would be the first requirement but the following specific practices should be prohibited:

(i) granting discounts unrelated to costs;

(ii) employment of manufacturers' representatives as merchandisers in retail outlets; and

(iii) discrimination between retail customers in the supply of goods, the withdrawal of goods near the end of their saleable life, the availability of extended credit and the supply of promotional material.

18. The Federation also stated that distribution charges should be based on the economic cost of delivering a standard load with differentials to ensure that retailers did not pay less than the standard price although those who took smaller quantities would pay more. Promotional allowances should be similarly differentiated and based on the economic delivery cost. The Federation maintained that such measures would assist the survival of efficient independent retailers.

19. A branch of the Federation also urged legislation to regulate the price at which bread could be sold to retailers.

**National Pharmaceutical Association**

20. The Association stated that buying on special terms was common in the retail pharmacy trade and that these terms were related to special quantities, to specified times of purchase and to prompt settlement of accounts or a restricted credit period. Buying groups for traditional chemists' items and toiletries also enabled chemists to obtain the advantages of bulk buying and to compete on price with multiple retailers. The Association had no direct evidence of any terms which could not be claimed to effect savings in the costs of suppliers.

**National Shoe Retailers Council**

21. Small independent shoe retailers made use of established trade discounts related to quantities purchased and some group buying also existed: in both cases the terms appeared to relate to savings in the costs of suppliers. The members of the Council sought to compete with their bigger competitors by offering branded (as opposed to fashion) merchandise with the emphasis on a high standard of service for the needs of the family.

**National Union of Licensed Victuallers**

22. Some brewery companies made loans at low interest rates, or free of interest, to 'free trade' outlets and also demanded royalty payments from mineral water suppliers if tenants were not required to buy mineral waters from the brewer, thereby increasing wholesale prices to tenants. The Union considered that loans to tenants should be on the same terms as to free trade outlets and that royalty payments for mineral waters should be discontinued.

**National Union of Small Shopkeepers of Great Britain and Northern Ireland**

23. The Union indicated that it was opposed to unfair trading whereby large discounts were obtained by major retailers which were not available to small shopkeepers.

**The Off-Licences Association**

24. Tenants of brewery-owned or controlled premises were required to buy all their supplies from the company concerned. The prices charged to such tenants were much higher than those charged to other retailers and prevented the former from retailing competitively.

**Pharmaceutical Services Negotiating Committee**

25. The Committee was opposed to discounts on any medicinal products on the ground that any scheme which resulted in the purchase by the public of more medicine than necessary was to be deprecated.

**Photographic Dealers Association**

26. The practice of granting unpublished discounts to some retail customers and not to others was common in the trade. Although it reduced the prices which some retailers were able to offer it was unfair to the majority of retailers, who attempted to compete by reducing the service which they offered to consumers. Moreover, it had led to the closure of many retail outlets with resultant unemployment and restricted consumer choice.

**Radio, Electrical and Television Retailers Association**

27. The Association considered that quantity discounts were being granted too widely and that they were not related to savings in production and delivery costs. The effect was that many discount stores were able to sell at prices which were below or only marginally above those at which independent retailers could buy. It was accepted that prices should be differentiated to reflect the real economies of bulk buying; the Association maintained that such terms should be uniform, available to all retailers and related to cost savings.

**The Scottish Federation of Grocers and Wine Merchants Association**

28. The Federation stated that discriminatory pricing was recognised throughout Western Europe as a problem requiring attention. It was particularly significant in Scotland where the population was not sufficiently concentrated to promote a retailing environment which could command favourable terms; moreover, the problems of higher distribution costs were greater than in other parts of the United Kingdom. Manufacturers had generally become less interested in serving independent retailers and discrimination against them had contributed to their reduced ability to re-invest. It seemed likely that the reduction in the number of independents would be a continuing feature in Scotland although there was strength in the independent sector, especially in such areas as fresh foods. On the other hand the growth of multiple retailers lessened consumer choice in terms of shopping sites and this bore hardly on the disadvantaged members of the community.

*Pricing*

29. Manufacturers discriminated in favour of large retailers in respect of prices, quantity and retrospective discounts and in respect of other services; moreover, many of these discriminatory practices bore little relation to savings which were or could be achieved. Examples given by the Federation were unpublished price lists, published price lists which contained some quantity discounts of doubtful justification and which did not include details of some of the terms and conditions of supply, minimum delivery quantities, quantity discounts which were not based on production or distribution cost savings, retrospective discounts which were paid to some customers regardless of achievement levels, credit terms which were not uniformly enforced or which favoured large customers and allowed them to utilise their suppliers' capital,

promotions and other special deals. There was no objection to a properly administered system of quantity discounts which reflected the actual savings capable of achievement by bulk ordering and delivery, nor to proper tests to establish a customer's credit-worthiness. It was also true that some services were offered to all retailers but they could be utilised only by the multiples. The result of discriminatory pricing was that large multiples were often able to sell goods below the price at which independents had to buy them. The extra cost was borne by small retailers who lacked the power to secure better terms and ultimately by consumers.

30. Recent investigations by the Price Commission suggested that the discounts practice was uncompetitive in its effect and that consumers would ultimately suffer. The absence of discrimination in the pricing of fresh foods allowed the independent to sell his products competitively whereas control of the retail price of bread had been a clear recognition of the fact that the benefit of discounts would not otherwise reach the consumer. Moreover, the gross margins of large retailers indicated that they were relatively inefficient. It was the Federation's conclusion that price and other advantages were secured by major retailers as a result of unreasonable pressure applied to manufacturers rather than through an equitable and identified system of cost savings.

*Remedies for discrimination*

31. The Federation stated that there was a need for legislation to ensure the existence of a competitive market; within such a market an efficient independent sector would facilitate a wide consumer choice. Specifically, the following measures were required:

(i) price lists and terms of trade to be published and registered with the Office of Fair Trading;

(ii) the Director General of Fair Trading to be responsible for determining whether such terms were justified on the basis of cost, when called upon to do so by the Minister, the Consumer Protection Advisory Committee or a *bona fide* association representing trade or consumer interests;

(iii) certain discriminatory actions to be prohibited; and

(iv) artificial transactions designed to circumvent control to be prohibited.

**Individual independent retailers**

32. Substantive evidence and views were received from 42 independent retailers. Apart from paragraphs 33 and 34 a summary of this evidence is not included in this appendix although we have taken account of it in the preparation of our report.

*Remedies for discrimination*

33. The majority of independent retailers who commented on this aspect regarded the reference practice as uncompetitive, unfair and likely to distort

the pattern of trade. In their view it had resulted in the closure of many small shops, a reduced level of service to consumers and was likely to restrict product choice and to affect adversely the level of prices which consumers ultimately would be required to pay.

34. Various remedies were suggested, principally the publication and enforcements of terms of trade, the control of prices charged by suppliers either by the limitation of discounts or of price differentials and some form of retail price control.

APPENDIX 16

# Voluntary Groups

## Development and operation of voluntary groups

1. The Commission received information and views from the Voluntary Group Association, which was formed in 1978 and represented the wholesaler members of nine voluntary groups operating mainly in the grocery trade; the Association was subsequently re-organised in order to include representatives of the retailer members of each group. Information and views were also received from other voluntary groups not belonging to the Association. This appendix summarises what was received from all these sources.

2. The voluntary groups which gave information and views to the Commission were mainly in the grocery sector although groups in other trade areas also contributed. They ranged from those with only one wholesaler member to those with about 40 members. Some had fewer than 500 retail members while others had around 4,000. The geographical coverage also varied, the majority operating throughout the United Kingdom. Approximately 90 per cent of grocery wholesalers were thought to belong either to a voluntary group or to a cash-and-carry group.

3. It was explained that voluntary groups have developed mainly in the past 25 years and mainly in the grocery trade. They were usually formed by one or more existing wholesalers acting in conjunction with a number of independent retailers; the groups were primarily operated and directed by the wholesalers but with retailer participation, to a greater or lesser extent, in determining policy. In one or two cases groups of independent grocers had set up their own wholesaler to act for them. In other sectors the formation of voluntary groups, including retailer-owned groups, has been a slow process but they have been established in fields such as hardware, pharmaceuticals and decorating supplies. In confectionery there had been long established buying groups and such groups had also been formed by independent retailers of domestic electrical appliances.

4. The trend was said to have been towards greater concentration in grocery wholesaling with many mergers of companies leading to improved efficiency, for example in the form of economies in bulk distribution and the mechanised handling of packaged grocery products. The majority of the companies which had survived the intense competition of recent years had formed themselves into groups or associations primarily in order to extract the best possible terms from suppliers, which could be passed on to retailers in the form of lower delivered prices. They were able to obtain better terms from suppliers not only because of the quantities purchased but because of the wide retail distribution which membership of a group implied. At the same time retailers needed a common identity and a common commercial strategy in order to combat the growing power of the multiples and an organisation which could organise low-price promotions and the supply of group 'own label' products.

5. The manner of distribution was also a factor since suppliers knew that wholesalers were generally operating within fairly distinct geographical areas. There was also an attempt by the majority of groups to ensure that the wholesaler members were not in competition with each other and this extended in some cases to what amounted to an exclusive franchise system. Moreover, although the few wholesalers outside groups were generally free to join, the majority of groups[1] sought to ensure that no one company or group of companies became dominant in the group.

6. The Association stated that the survival of the independent retailer was not dependent wholly on the price at which he bought his goods. Other factors, such as urbanisation and rural depopulation, also played a part in his decline. There was also the need for larger amounts of capital for initial acquisition of sites and for the more sophisticated equipment which was required to manage an efficient grocery shop. Voluntary groups were particularly well placed to deal with some of these problems, such as supplying the independent retailer in a remote rural area. In the view of the Association it was a measure of the success of the group movement that in 1978 it handled rather more than 10 per cent of the grocery trade. In the grocery sector the annual turnover of the groups (1978) was of the order of £650 million to £700 million with 'own label' sales accounting for about 15 per cent of total sales.

7. The administration of the groups in respect of the head office function and any promotional activity were paid for by a levy on individual retailers. In these respects retailers in the majority of groups were able to influence group policy decisions and they also exercised some influence on the prices charged by individual wholesalers; in the final analysis, however, group wholesalers were individually responsible for their own profitability. Some groups had a strong head office function which acted on behalf of the whole group in negotiations with suppliers and in others this function was undertaken by one of the wholesalers on behalf of the group. The primary objective was to combine the buying power of the group members in order to obtain the most favourable terms. In some instances, for example with 'own label' products, this was done by the group actually purchasing the goods from the supplier and re-selling to the wholesaler members with the benefit of any discount which had been obtained. More commonly, for the generality of products a group would simply negotiate terms and the contractual relationship would still be between the supplier and the individual wholesaler but with the benefit of centrally negotiated terms. In those instances it was generally open to a wholesaler to improve on the centrally negotiated terms, for example by negotiating terms for local promotions.

8. Discounts based on a target annual turnover were also a feature of the trading policies of some groups and their wholesale members, and wholesalers both received and gave this kind of discount. It was not necessarily related to savings in costs of distribution but was nevertheless a useful form of competitive trading.

[1] This would apply only to groups with more than one wholesaler in membership.

9. One aspect of 'own label' sales was that they helped to foster loyalty to voluntary group trading. However, it was virtually impossible to sell national brands at a price comparable with that of the multiples and thus 'own labels' were very much a necessity. The multiples also sold 'own label' products but the differential in the price at which the multiples and the groups respectively could buy 'own label' goods was much less than that of comparable national brands; sometimes the groups could buy them more cheaply than the multiples. There was a wide variety of possible suppliers of 'own label' goods and sometimes the manufacturer of a national brand was keen, particularly in times of surplus capacity, to participate.

10. Retailer members were not required to buy all or any stated proportion of the goods they needed (and which the wholesaler was capable of supplying) through their group and were technically quite free to belong to more than one group if they found it advantageous to do so. However, they were encouraged to make purchases of the majority of their goods from their wholesaler member. It was suggested that an expectation of the order of 50 per cent was generally looked for, the use of a Price List of a Price List and Order Form (PLOF) on a weekly basis in practice acting as an aid to retailer members in this respect. Another aspect was the minimum value of an order placed by a retailer if a delivery was to be regarded as viable. It was suggested by the Association (1979) that this should be an average of between £600 and £700 but the mix of products and the distance to be delivered were crucial factors which would affect the minimum value in any particular instance. Prices charged to retailers varied from one wholesaler to another in the same group.

11. Certain standards, relating to hygiene, shop lay-out and methods, were demanded by the majority of groups before retailers were accepted into membership. A range of services was also available to retail members. The range and the quality of these services varied quite considerably according to the group and the individual wholesaler concerned. The following is a list of some services which were commonly made available, although very few groups provided all these services:

(i) advice on initial business purchases;
(ii) provision of shop equipment at discounted terms;
(iii) advice on business methods;
(iv) provision of marketing and product information;
(v) staff training courses;
(vi) group insurance facilities;
(vii) loans on favourable terms or assistance to procure them;
(viii) provision of 'own label' products;
(ix) merchandising teams for store openings and refits;
(x) computerised invoices showing suggested retail prices and gross margins.

**Discrimination and independent retailers**

12. It was argued that the impact of the discount practice, and in particular of the preferential discounts granted to multiple retailers, had contributed to a lessening of competition and a reduction in the market share of the independent retailers. Selling at discounted prices had been common in the grocery trade for many years and, historically, the terms accorded to multiples were better than to wholesalers. The growth of the multiples had resulted in a massive increase in their buying power and the historical differential referred to was now maintained by the threat of the withdrawal of custom. The wholesaler did not have that power since it was essential for him to stock a wide range of products and many wholesalers could buy only at prices which were higher than those at which the multiples sold. Although the groups used their buying power in order to negotiate the most favourable terms with suppliers the multiples were in a much stronger position since they were able to negotiate on the basis of a firm commitment for large orders. The discriminatory price advantage enjoyed by the multiples consisted, however, not only of the initial buying price but also of better credit terms and the unquantifiable cost of the merchandising assistance provided by the manufacturers. All this had severe consequences for the independent retailer whom the wholesaler served. In the grocery sector multiples were generally able to work on a gross margin which was more than that of the independents. One result of all these factors was that prices charged by voluntary group retailers in the grocery sector tended to be at the high end of the market.

13. Another recent development which had adversely affected independents was the tendency for multiple retailers and for some wholesalers to sell fast moving and more profitable non-food items in what were predominantly grocery outlets. This was particularly true of the hardware and 'do it yourself' areas and was not accompanied by any real form of professional advice or service to the consumer.

14. The 'drop shipment' problem was also a factor which operated in favour of multiple retailers and to the disadvantage of group wholesalers and their customers. Certain manufacturers were prepared to deliver to branches of multiples and sometimes direct to certain voluntary group retailers in small drops at prices which were similar to those charged to wholesalers for large drops. Generally, independent retailers needed to purchase their requirements from wholesalers who required an operating cost plus a margin. The association maintained that in the light of actual distribution costs either the price charged to multiples was too low or that charged to wholesalers was too high. It was evident that the price charged to multiples was unrelated to the actual savings which might be achieved by the planning and execution of large orders. It was also apparent that certain manufacturers seemed to prefer this method of trading, possibly because dealing direct with the branches of multiple produced, in their view, a higher proportion of orders than trading with wholesalers. The Association had discussed the problem with a number of manufacturers (these discussions had been quite separate from similar ones conducted by the National Federation of Wholesale Grocers and Provision

Merchants)[1] but this had not resulted in any solution to the problem. This was a serious matter for the members of the Association since one effect of the problem was that many deliveries of groceries were being made at prices lower than those on the published quantity discount scales. It was evident from research carried out by the Association that the large majority of suppliers in the grocery trade did not adhere to their published scales of quantity discounts. However, a retailer-owned group which gave evidence stated that it was able to buy in this way and could obtain favourable terms centrally for deliveries of items to individual members and that this arrangement effected administrative savings. In voluntary groups where the wholesalers were independent concerns retail members could only order direct from manufacturers outside group arrangements.

15. However, recent developments in the structure of the retail trade had created some opportunities for independents. Multiples were generally uninterested in acquiring or retaining sites of under 6,000 square feet and because of the costs to consumers associated with shopping in the High Street areas there were distinct possibilities for the independent retailer on smaller sites in neighbourhood areas. Moreover, an independent retailer could provide flexibility in such matters as opening hours and the range of items stocked; and in abnormal conditions, such as the road haulage dispute at the beginning of 1979, an independent retailer could provide additional and ready sources of supply. An independent should be able to offer a combination of competitive prices and superior convenience and service. The wholesaler was geared to supply him, either through a voluntary group or, if he was too small to provide the size of order which would be viable for the traditional delivered wholesaler, through a cash-and-carry warehouse.

**Remedies for discrimination**

16. The Voluntary Group Association considered that manufacturers should publish their terms of trade and adhere to them. Legislation in this area was undesirable since it could well have unforeseen side effects and was likely to lead to protracted legal disputes. A voluntary code of practice would be a better way of correcting anomalies of distribution in the grocery trade but if this could not be secured the Association did not recommend at this stage the introduction of 'Fair Trading' type legislation.

17. Other groups made very little comment about any need for legislation. Some mention was made of the need to ensure adherence to published prices but it was recognised that there were enforcement difficulties. Reference was also made to the possibility of developing a standard promotional deal.

**Survey of voluntary group retailers**

18. Inquiries were made of 16 retailers who had joined grocery voluntary groups within the last three or four years. Names were provided by the groups

[1] See Appendix 9, paragraph 9.

and a selection was made from this list. Thirteen retailers responded to the inquiries. They came from a wide area of the country including Scotland, Northern Ireland and Wales. Annual sales varied from about £60,000 to over £750,000, gross margins averaged 14·6 per cent (within a range from 12·1 per cent to 18·0 per cent) and net margins averaged 2·8 per cent (within a range from 0·5 per cent to 5·0 per cent).

19. The retailers were asked whether their membership of a voluntary group enabled them to compete effectively with large retailers. Two replied that it did not and three of those who replied in the affirmative were critical of some aspect of the group's policy. The criticisms were concerned mainly with uncompetitive prices secured by a group. However, the majority of retailers were generally satisfied with the services provided by a group and all intended to remain in membership although two had considered a transfer to another group. The value of membership of a group was assessed mainly in terms of the benefit to be derived from competitive buying; other factors, such as the availability of 'own label' goods and promotions and of administrative support were also mentioned but some aspect of price advantage was referred to by half the retailers who replied.

## APPENDIX 17

*(referred to in paragraphs 7.21, 7.27)*

# Views of consumer organisations

**Age Concern**

1. The bodies concerned with England and Scotland both expressed a concern over the possible effect of the reference practice on the interests of the elderly. Age Concern Scotland provided the following views but drew on material which was produced for the whole of the United Kingdom.

2. For the less mobile it was important that they should live within reasonable distance of or have ready access to food shops, a chemists' shop and a post office. It was estimated that 40 per cent of the journeys made by the elderly were for shopping and that shopping for food was one of the most important activities which were undertaken. The provision of food in small quantities which were easily accessible, well packaged and labelled was therefore of significance. In general, the less mobile elderly would be best served if the facilities which were important to them were available in the neighbourhood in which they lived.

3. The reference practice had almost certainly contributed to the closure of many small local food shops and other neighbourhood facilities. The closure of one small shop might not be a major problem but it often produced a chain reaction and resulted in a general reduction in the local facilities which were important to old people. There had been rapid decline in the number of chemists' shops and this was especially significant for the aged in rural areas: in part this trend had been accelerated by the fact that supermarkets had creamed off the more lucrative aspects of the chemists' trade, thereby forcing the closure of smaller pharmacies.

4. The supermarkets and town centre shops were used by those elderly people who were able to travel in order to obtain a greater variety of goods (generally at lower prices than elsewhere) and the advantage of special promotions. To this extent Age Concern felt that fit and active old people had benefited from the effects of the 'High Street price war'. However, it was pointed out that because of the way in which many old people were compelled to buy, for example, in small quantities, the cost of travel often eliminated any price advantage which might be obtained. Moreover, for those who could not travel the cost of buying locally was often high and it was estimated that food in small local shops cost 5–6 per cent more than in supermarkets; it was also generally true that those who were financially the least well off made up a large proportion of such people.

**The Consumers' Association, the National Consumer Protection Council and the National Federation of Consumer Groups**

5. These bodies expressed interest in the work of the inquiry. The Council and the Federation stated that discounts produced an immediate price benefit

for the consumer but that there might be disadvantages for the small trader. The Council emphasised the effect on the small trader of increased bulk buying by the consumer from supermarkets. The Federation considered that discriminatory pricing might need to be the subject of statutory intervention.

**The National Consumer Council**

6. The Council stated that discounts which could not be attributed to savings in the costs of a supplier seemed to be an abuse of retail buying power. However, it also seemed that the benefits of favourable buying were substantially passed on to consumers in the form of lower prices and to that extent consumers gained a short-term economic advantage. Vigorous price and non-price competition between retailers and suppliers was beneficial to consumers so long as it did not arise from market distortions. 'Own label' goods were an aspect of competition which appeared to have been of benefit since they had the general effect of widening consumer choice. On the other hand, the complaint by manufacturers that some retailers virtually forced them to accept unfavourable and uneconomic terms of purchase could be a cause for concern.

7. The Council expressed its concern about the future of small local shops. Shop closures resulted in general inconvenience to consumers, particularly in rural areas, who could then be required to carry the additional costs of travelling further to obtain goods and services. However, these closures were caused by a number of factors and it seemed impossible to separate the effect of the negotiation of discounts by large shops from the general competitive advantage they had through greater resources and more professionalism. Moreover, the Council was unable to judge whether the prices originally set by food manufacturers, from which discounts were negotiated, were themselves related in the most efficient way to costs and it could be that the buying power of large retailers was needed in order to negotiate satisfactorily cost-related prices. In that event the position of small retailers who did not have sufficient buying power to negotiate discounts would be even more unsatisfactory.

8. Another aspect of the practice was its effect on the poor and other disadvantaged members of society. The Council reported that the poor generally tended to shop locally in small stores and were unable to make the bulk purchases which would make travel to more distant and lower priced shops economic. Some of them also had particular problems of access to shops charging lower prices.

9. The Council considered that the prohibition of the discount practice might possibly result in higher prices for the majority of consumers and might also harm independent traders who were members of voluntary groups. Legislation on the lines of the Robinson-Patman Act in the United States of America was generally unattractive. A possible remedy was to allow trading only on the basis of published prices and terms but it was recognised that there could be enforcement problems.

**The National Federation of Women's Institutes**

10. There had been significant changes in recent years both in shopping facilities and in shopping habits. Supermarkets and discount stores had increased in number as also had traffic-free shopping precincts and parking areas near shopping centres. Pre-packed goods were also a feature which had developed considerably. At the same time many village shops had closed, general standards of service had declined and there was a more restricted choice of goods.

11. The Federation reported that these changes had brought some advantages, notably lower prices, a more rapid turnover, of goods better displays and more convenient shopping facilities. On the other hand the disadvantaged members of society in rural areas either had to pay high prices in village shops where such shops remained or were unable to reap fully the benefit of bulk buying in town centres because of inadequate and costly transport services and the difficulty of carrying large amounts of shopping. The changes had generally benefited the urban and semi-rural prosperous majority and had harmed the rural, disadvantaged minority of the population.

12. The Federation generally considered that the present retailing structure and shopping habits reflected a new way of life which the majority of people would be reluctant to change. There was, however, a need to assist the small trader who provided a vital service for the disadvantaged sections of society, especially in rural areas. It would be impracticable and unreasonable to interfere with the operation of commercial discounting and assistance should be directed to such matters as rate rebates and tax relief. There was also scope for the further development of voluntary group trading.

APPENDIX 18

*(referred to in paragraph 1.4)*

## Associations and other bodies from whom the Commission received information or views

(i)
Age Concern, England
Age Concern, Scotland
Birmingham and Midlands Grocers' Association
Booksellers Association of Great Britain and Northern Ireland
Bristol and West Grocers' Association
British Carpet Manufacturers Association
British Importers Confederation
Consumers Association
Co-operative Union Limited
Delicatessen and Fine Foods Association
Department of the Environment
Department of Health and Social Security
Federation of Bakers
Federation of Medium and Small Employers
Federation of Sports Goods Distributors Limited
Food and Drink Industries Council
Food Manufacturers Federation Inc
Hereford and Worcester County Council
Highland Regional Council
Institute of Grocery Distribution
Institute of Purchasing and Supply
Leeds and District Chamber of Trade
Mail Order Traders Association
Merseyside Chamber of Commerce and Industry
Ministry of Agriculture Fisheries and Food
Motor Agents Association
Motor Cycle Association of Great Britain Limited
Multiple Food and Drink Retailers Association
Multiple Shops Federation
Music Trades Association
National Association of Cycle and Motor Cycle Traders Limited
National Association of Pharmaceutical Distributors
National Chamber of Trade
National Consumer Council
National Consumer Protection Council
National Federation of Consumer Groups
National Federation of Retail Newsagents
National Federation of Sub-Postmasters
National Federation of Wholesaler Grocers and Provision Merchants
National Federation of Women's Institutes
National Food and Drink Federation
National Pharmaceutical Association
National Shoe Retailer's Council

National Union of Licensed Victuallers
National Union of Small Shopkeepers of Great Britain and Northern Ireland
Off Licences Association
Oldham and Rochdale Districts Grocers' Association
Pharmaceutical Services Negotiating Committee
Photographic Dealers Association
Post Office
Proprietary Articles Trade Association
Radio and Television Association of Scotland
Radio Electrical and Television Retailers Association Limited
Scottish Federation of Grocers and Wine Merchants Associations
Scottish Motor Trade Association
Standing Conference of Rural Community Councils
Textile Distributors Association
Union of Shop Distributive and Allied Workers
United Road Transport Union
Voluntary Group Association
West Midlands County Council
Wholesale Confectioners Alliance
Wholesale Grocers Association of Scotland
Wholesale Tobacco Trade Association
Wallpaper Paint and Wallcovering Retailers Association

(ii)

## Companies and persons from whom the Commission received information or views

Adria Limited
B A Alcock Esq
Allen Radio (Croydon) Limited
Allied Bakeries Limited
Allied Breweries (UK) Limited
Allied Grocery Distributors Limited
James Asman Limited
Associated Biscuits Limited
Associated British Foods Limited
Associated Dairies Limited
Atkinsons of Windermere Limited
Audits of Great Britain Limited
J Barlow Esq
Bass Charrington Limited
Bass Trade Development Limited
Batleys of Yorkshire Limited
Beecham Proprietaries (Division of Beecham Group Limited)
Berger Jensen & Nicholson Limited
Bestobell Paints Limited
Birds Eye Foods Limited
Blue Circle Enterprises (Blue Circle Industries Limited)
Boddingtons Breweries Limited

A J Bole Esq
R J Bolton & Co Limited
Booker Belmont Wholesale Limited
Boscombe Wallpapers
Bowater-Scott Corporation Limited
B P Oil Limited
E Brace & Partners
British Tissues Limited
Burmah Oil Trading Limited
A E Burnett Esq
Burtons Gold Medal Biscuits Limited
Cadbury Typhoo Limited
J W Cameron & Co Limited
Cartiers Superfoods Limited
Cavern Food & Wine Store
Charnos Limited
Cheshire Tobacco Distributors Limited
Chiltonian Limited
P M W Clarke Esq
Claverdon Post Office Stores
Colgate Palmolive Limited
Comet Radiovision Services Limited
Co-operative Retail Services Limited
Co-operative Wholesale Society Limited
John Copeman & Sons Limited
Courage Limited
Courtaulds Hosiery Limited
Crown Decorative Products Limited
G Dawson Motors Limited
Debenhams Limited
Dee Jay Discount Foods Limited
De Witt International Limited
S J Dixon & Son Limited
R Eastgate & Co Limited
W Edwards Esq
Elbeo Limited
Electrolux Limited
E M I Limited
Esso Petroleum Company Limited
Ever Ready Company (Holdings) Limited
Dr Ann R Everton
Farmhouse Biscuits Limited
H Flude & Co (Hinckley) Limited
Forest Stores
F Fretwell Downing Limited
Fuller Smith & Turner Limited
Furniss & Company Limited
A Fyffe Esq
Gallaher Limited
Gateway Foodmarkets Limited

General Foods Limited
Elida Gibbs Limited
Gibbs-Palmer Limited
Glendinning Associates International Consultants Limited
Goodlass Wall & Co Limited
Goose & Son Limited
Mrs D J Green
Greenhall Whitley & Company Limited
Hale Trent Cakes Limited
Hamlets Radio & Television Limited
William Harris Bacon Company Limited
Harris & Sons (Hindhead) Limited
J C Harrold Esq
Harvo Limited
H J Heinz Company Limited
J L Henderson Esq
E W Hewitt Limited
Hodgsons Radio & Television Limited
Home Hardware Group Limited
Homescope Garden Centre Limited
Hoover Limited
R Horne t/a Charlton Village Stores
Hotpoint Limited
J and P S M Hughes
Imperial Chemical Industries Limited
Imperial Tobacco Limited
International Paint Company Limited
International Stores Limited
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PIF Pharmaceuticals Limited
B Pike Esq
J St P Pilkington Esq
P Panto & Co Limited
Alfred Preedy & Sons Limited
Pretty Polly Limited
Procter & Gamble Limited
Purdy Cakes Limited
Raimes Clark & Co Limited
Ranks Hovis McDougall Limited
Rawlin Bros (Wholesale) Limited
R H M Bakeries Limited
W Robb Esq
Frank Roberts & Sons Limited
Robertsons (Bakers) Limited
J & T Robinson
Rolls & Company Limited
Rothmans International Limited
F M Rowe Esq
Rowley's Electrical Limited
Rowntree Mackintosh Limited
Rushworths Music House Limited
J Sainsbury Limited
Salter & Son Limited
Scottish & Newcastle Breweries Limited
Shaws Price Guides Limited
Shell UK Limited
Smedley-HP Foods Limited
Sounds Ideal
Sounds of St James (Henri et Phillip Limited)
B Snowden Esq

Stewart Nairn Group Limited
Sullivan Powell & Co Limited
Paul Taylor BJE Limited
Tesco Stores (Holdings) Limited
The Boots Company Limited
The Economist Intelligence Unit Limited
The Golden Disc
'The Grocer' Magazine
The Record Shop
The Viscount Trenchard
Thorn Domestic Appliances (Electrical) Limited
TKM Foods Limited
Total Oil Great Britain Limited
J Torkington t/a Torkingtons
Tower Radio Limited
Tudsbury Limited
Thomas Tunnock Limited
R Tuohey Esq
U B (Biscuits) Limited
U B (Foods) Limited
Unichem Limited
United Biscuits (UK) Limited
V F Corporation (UK) Limited
B H Walter Esq
Warburtons Limited
B W Warren Esq
Watney Mann & Truman Brewers Limited
Weleda (UK) Limited
Whitbread & Company Limited
Whitbread Wessex Limited
Wolverhampton & Dudley Breweries Limited
R Wright t/a Buywright

APPENDIX 19

*(referred to in paragraph 7.1)*

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